रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

# भारत का राजपत्र
# The Gazette of India

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सं. 9] नई दिल्ली, फरवरी 23—मार्च 1, 2014, शनिवार/फाल्गुन 4—फाल्गुन 10, 1935
No. 9] NEW DELHI, FEBRUARY 23—MARCH 1, 2014, SATURDAY/PHALGUNA 4—PHALGUNA 10, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

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कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 5 सितम्बर, 2013

**का॰आ॰ 696.**—केंद्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं॰ 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए रिट याचिका (आपराधिक) सं॰ 120/2012 में एवं इसी संव्यवहार में तथा इससे सम्बद्ध अन्य मामलों में सीबीआई की ओर से भारत के सर्वोच्च न्यायालय, नई दिल्ली में उपस्थित होने के लिए सर्वश्री अमरेंद्र शरन, अमित आनंद तिवारी और शंचित गुरु, वकीलों को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा॰ सं॰ 225/51/2013–एवीडी–II]

राजीव जैन, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**

**(DEPARTMENT OF PERSONNEL AND TRAINING)**

New Delhi, the 5th September, 2013

**S.O. 696.**—In exercise of the powers conferred by Sub-section (8) of section 24 of the Code of Criminal Procedure. 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Amarendra Sharan, Amit Anand Tiwari and Shanchit Guru, Advocates as Special Public Prosecutor for appearing on behalf of CBI in Writ Petition (Criminal No. 120/2012 in the Supreme Court of India, New Delhi and other matter connected therewith or incidental thereto.

[F.No. 225/51/2013-AVD-II]

RAJIV JAIN, Under Secy.

**उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण मंत्रालय,**

**(उपभोक्ता मामले विभाग)**

**भारतीय मानक ब्यूरो**

नई दिल्ली, 3 दिसम्बर, 2013

**का॰आ॰ 697.**—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं:—

**अनुसूची**

| क्रम सं. | संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक | संशोधन की संख्या और तिथि | संशोधन लागू होने की तिथि |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1. | आई एस 15546:2005 स्वचल वाहन- सीटें उनके स्थिरकें तथा श्रेणी एम 1 के लिए शीर्ष रिस्ट्रेन्ट-विशिष्टि | संशोधन संख्या 1, सितंबर, 2013 | तत्काल प्रभाव से |
| 2. | आई एस 10939:2000 स्वचल वाहनों के टायर ट्यूब वाल्वों के लिए पदनाम प्रणाली (पहला पुनरीक्षण) | संशोधन संख्या 2, अक्तूबर, 2013 | तत्काल प्रभाव से |

संशोधन की प्रतियां भारतीय मानक ब्यूरो मानक भवन 9 बहादुर शाह जफरमार्ग नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे, परवाणु, देहरादून तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ टी ई डी/जी-16]

पी. सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**

**(Department of Consumer Affairs)**

BUREAU OF INDIAN STANDARDS

New Delhi, the 3rd December, 2013

**S.O. 697.**—In pursuance of clause (b) of Sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:—

**SCHEDULE**

| Sl. No. | No. year & title of the Indian Standards | No. and year of the amendment | Date from which the amendment shall have effect |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1 | 15546:2005 Automotive vehicles-Seats, their anchorages and head restraints for category M1-Specification | Amendment No. 1 Sept, 2013 | With immediate effect |
| 2 | 10939:2000 Designation system for tyre tube valves for automotive vehicles (First Revision) | Amendment No. 2 Oct, 2013 | With immediate effect |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Parwanoo, Dehradun, Thiruvanathapuram.

[Ref. TED/G-16]

P.C. JOSHI, Scientist & Head (Transport Engg.)

**कार्यालय मुख्य आयकर आयुक्त, जयपुर**

जयपुर, 10 फरवरी, 2014

**सं॰ 14/2013-14**

**का॰आ॰ 698.**—आयकर नियम,1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिये कथित धारा के उद्देश्य से श्री गणेश फाउंडेशन फॉर एजुकेशन एंड रिसर्च, जयपुर को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखंउ (23सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्र. : मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/13-14/7320]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

**OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, JAIPUR**

Jaipur, the 10th February, 2014

**No. 14/2013-14**

**S.O. 698.**—In exercise of the powers conferred by Sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "M/s. Shri Ganesh Foundation for Education & Research Jaipur" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of

Sub-clause(vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO(Tech.)/10(23C)(vi)/2013-14/7320]

ATULESH JINDAL, Chief Commissioner of Income tax

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**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 29 जनवरी, 2014

**का॰आ॰ 699.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, पारबती हाइड्रोइलेक्ट्रिक प्रोजेक्ट, नेशनल हाइड्रोइलेक्ट्रिक पॉवर कारपोरेशन, मंडी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 चंडीगढ़ के पंचाट (संदर्भ संख्या 239/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/151/2011-आईआर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 29th January, 2014

**S.O. 699.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 239/2012) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Parbati HE Project, NHPC, Mandi & Ors. and their workman, which was received by the Central Government on 24/01/2014.

[No. L-42012/151/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.**

**PRESENT:** SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No. 239/2012

Registered on 10.4.2012

Sh. Khem Chand, S/o Late Sh. Kuldeep Chand, Village Chakgohar, PO-Bhangrotu, Tehsil Sadar, District Mandi, Mandi (HP). ...Petitioner

**Versus**

1. The General Manager, Parbati HE Project, NHPC, 2nd Stage, VPO Nagwain, Sub-Tehsil, Aut, District-Mandi (HP).

2. The Director, Himachal Joint Venture, Parbati HE Project Lot PB-2, Thela (Bhunter) Tehsil and District Kullu, Kullu (HP). ...Respondents

**APPEARANCES**

| | |
|---|---|
| For the workman | None. |
| For the Management | Sh. V.K. Gupta for respondent No. 1.<br>None for respondent No. 2 |

**AWARD**

**Passed on 25.10.2013**

Central Government *vide* Notification No. L-42012/151/2011 [IR (B-U)] Dated 14/03/2012, by exercising its powers under Section 10 Sub section (1) Clause (d) and Sub section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the demand of Sh. Khem Chand S/o Late Sh. Kuldeep Chand Mandi (HP) against the management of Himachal Pradesh Joint Parbati HE Project, Thela District Kullu (HP) in retrenching the services *w.e.f.* 18/10/2010 is legal and justified? What relief the workman is entitled to?"

After receiving the referene the notices were issued to the parties. The workman did not appear despite notice sent through registered cover and consequently did not file any statement of claim. Thus, a 'No Dispute' award is passed in the case. Let hard and soft copy of the Award be sent to Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का॰आ॰ 700.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, भारत संचार निगम लिमिटेड, करनाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़-2 के पंचाट (संदर्भ संख्या 1312/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/8/2007-आईआर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 700.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 1312/2007) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Bharat Sanchar Nigam Limited, Karnal and their workman, which was received by the Central Government on 24/01/2014.

[No. L-40012/8/2007-IR (DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

**PRESENT:** SRI KEWAL KRISHAN, Presiding Officer.

**Case No. I.D. No. 1312/2007**

Registered on 4.7.2007

Sh. Narinder Rathi, C/o Sh. M.L. Chandana, 38A, Pritam Nagar, Karnal, Haryana

**Also at:-** Sh. Narinder Rathi, S/o Ved Prakash R/o Village Ganjbar, Tehsil and District Panipat, Haryana.

Petitioner

**Versus**

The General Manager, Bharat Sanchar Nigam Limited, Sector 8, Urban Estate, Karnal.

Respondents

**APPEARANCES:**

For the workman Sh. Ankur Malik Advocate.

For the Management Sh. Anish Babbar Advocate.

**AWARD**

**Passed on 30.10.2013**

Central Government *vide* Notification No. L-40012/8/2007 [IR(DU)] Dated 7.5.2007, by exercising its powers under Section 10 Sub section (1) Clause (d) and Sub section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of General Manager, BSNL, Karnal in terminating the services of their workman Sh. Narinder Rathi, *w.e.f.* 22.9.2005 is legal and justified? If not, to what relief the workman is entitled to?"

In response to the notice workman appeared and submitted his statement of claim pleading that he was employed by the management *w.e.f.* 20.9.1995 on the post of Helper. He met with an accident on 2.1.2005 when he fell from the telephone pole while discharging his duties and this was also reported in newspapers. That the petitioner went to join after recovering but he was not allowed to do so and his services were terminated on 22.9.2005 without any retrenchment compensation and serving any notice and as such his termination is illegal.

Management filed written reply denying that the workman was ever employed by it and pleaded that the workman was assigned the work on contract basis and when he was found misappropriating the telephone sets of different subscribers, he was confronted with the complaints and he stopped performing job *w.e.f.* 22.9.2005. He is not an employee of the management.

In support of the case workman appeared in the witness box and filed his affidavit reiterating his case as stated in the claim statement. He also examined Ramesh Chander who has deposed that the claimant worked as an employee of the management at Panipat along with him.

On the other hand management examined S.L. Bajaj, AGM (Legal) who filed his affidavit reiterating the case as stated in the written statement.

I have heard Sh. Ankur Malik counsel for the workman and Sh. Anish Babbar counsel for the management and perused the file.

It was contended by the learned counsel for the workman that workman continuously worked for the management from 20.9.1995 and it was possible only he was regular employee of the management and management cannot deny the relationship. Since his services were terminated arbitraily, he is entitled to be reinstated with all the consequential benefits. I have considered the contention of the learned counsel.

It is the definite case of the workman that he was employed by the management from 20.9.1995. On the other hand the management has pleaded that the workman was working on contractual basis and has stopped performing the job *w.e.f.* 22.9.2005. It was for the workman to prove that he was employed by the management but he neither filed any appointment letter nor summoned any record from the management to prove the fact that he ever served the management as an employee. According to him he was employed at a regular post of Helper. If he was appointed on regular post, then he must have been given some appointment letter by the competent authority and he must have been appointed by following some procedure. But in the absence of any appointment letter and the proof that he was selected by following due procedure, it cannot be said that he was ever employed by the management. The workman while appearing in the witness box has admitted in his Cross-examination that there was no post of helper. When it was so, how the workman can claim that he was ever employed by the management as a helper? In the circumstances it is to be taken that he was working with the management only on contract basis and when he stopped performing the job, his contract came to an end and he was not entitled to any retrenchment compensation or notice etc.

Since workman was not in the service of the management, it cannot be said that his services were terminated and he is not entitled to any relief. The reference is decided accordingly against the workman.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का॰आ॰ 701.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर (प्रोजेक्ट्स), अफकॉन्स इंफ्रास्ट्रचर लिमिटेड, जम्मू एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 252/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/06/2013-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 701.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 252/2013) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager (Projects), Afcons Infrastructure Limited, Jammu & Ors. and their workman, which was received by the Central Government on 24/01/2014.

[No. L-42011/06/2013-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

**PRESENT:** SRI KEWAL KRISHAN, Presiding Officer

**Case No. I.D. No. 252/2013**

Registered on 9.5.2013

The Working President, Center of Indian Trade Unions, State Committee, Head Office, Gandhi Nagar, A/27, Jammu - 180004.

...Petitioner

**Versus**

1. The General Manager, M/s. Afcons Infrastructure, Ltd., Jammu-Udhampur, NHIA Road Project, Bye Pass Road, AT & PO Panjgran, PS Nagrota, Jammu-180004.
2. The Project Manager, National Highway Authority of India, House No. 7, Sector 5, Trikuta Nagar, Jammu.

...Respondents

**APPEARANCES**

| | |
|---|---|
| For the Workman | Sh. Sobat Ali, President Union |
| For the Management | Sh. Deep Chander, Assistant Manager for respondent No. 1 |

**AWARD**

Passed on 31.10.2013

Central Government *vide* Notification No. L-42011/06/2013-IR(DU) Dated 22.4.2013, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of M/s. Afcons Infrastructure Limited, Jammu &Udhampur, NHIA Road Project in not accepting the demands of union is justified? To what relief the workmen are entitled to and from which date?"

Today, Sh. Sobat Ali, President of the Union and Deep Chander representative of the respondent No. 1 appeared and stated that the matter has been resolved between the parties and the workers' Union do not want to file any statement of claim. In view of this statement of the parties a 'No Dispute' award is passed. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का॰आ॰ 702.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, सेंट्रल पॉवर रिसर्च इंस्टिट्यूट, बैंगलोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/03/2014-आईआर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014.

**S.O. 702.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director General, Central Power Research Institute, Bangalore and their workman, which was received by the Central Government on 24/01/2014.

[No. L-42012/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE**

Dated : 15th July 2013

**Present** : Shri S. N. NAVALGUND,
Presiding Officer

**Complaint No. 01/2012**

| Complainant | Respondent |
|---|---|
| The General Secretary, Central Power Research Institute Employees Union, No. 822, 1st Main Road, Yeshwantapura, Bangalore-560 022. | The Director General, Central Power Research Institute, Prof. Sir C V Raman Road, Sadashivnagar, P.B. No. 8066, Bangalore-560 080. |

**Complaint No. 02/2012**

| Complainant | Respondent |
|---|---|
| 1. Sh. N. K. Ousef, No. 4, GEO House, 1st A Cross, Nagaraj Layout, Kavalbyrasandra, R T Nagar, Bangalore-32. | The Chief Administrative Officer, Central Power Research Institute, Prof. Sir C. V. Raman Road, Sadashivnagar, P. B. No. 8066, Bangalore-560 080. |
| 2. Sh. Govinda Raju H V, S/o Late Mr. Venkatappa, No. 82, Vinayakanagara, Hesarghatta, Bangalore-560 088. | |

**Complaint No. 03/2012**

| Complainant | Respondent |
|---|---|
| 1. Sh. K. Channaiah, Qrt. No. 8, Type II, CPRI Colony, New BEL Road, Bangalore-12. | The Additional Director & Disciplinary Authority, Central Power Research Institute, Prof. Sir C V Raman Road, Sadashivnagar, P B No. 8066, Bangalore-560 080. |
| 2. Sh. K John, Qrt. No. 10, Type II, CPRI Colony, New BEL Road, Bangalore-12. | |

**Appearances:**

**I Party** : Shri T Anantharam
Authorised Representative

**II Party** : Shri M R C Ravi
Advocate

**COMMON ORDER ON APPLICATION OF RESPONDENT FILED UNDER SECTION 11 OF I D ACT DATED 05.06.2013**

1. In these complaints filed by the employees and members of CPRI Employees Union under Section 33A of the Industrial Disputes Act for change in their Service Conditions without approval of this Tribunal as required under Section 33(2) (b) wherein the reference raised by the CPRI Employees Union for adjudication on their demands was pending in C R 54/2007 on the file of this tribunal, the present applications are filed by the Respondent under Section 11 of the ID Act to dismiss the complaints as not maintainable and also to recall and set aside the interim orders passed in respective complaints since they have become void-abintio in view of this tribunal rejecting the Reference in C R No. 54/2007 by Award dated 25.02.2013 (notification dated 11.03.2013) holding that Respondent is not an Industry as defined under Section 2(j) of ID Act to come under the purview of the ID Act and the jurisdiction of this tribunal/Court. In all these applications it is stated that on the specific contention of the Respondent in the reference that it is not an industry as defined under Section 2(j) of ID Act, this tribunal while upholding the said contention rejected the reference by award dated 25.02.2013 holding that it is not an industry and thereby this tribunal has no jurisdiction to adjudicate on the demands covered in the reference, these complaints do not survive/not maintainable and all the interim orders passed have become void-abintio and non-est in the eyes of law.

2. These applications are opposed by the complaints contending that at the time of change in their service conditions the valid reference made by the Central Government for adjudication on the demands was being pending before this tribunal/Court, it was mandatory on the part of the Respondent to seek permission of this tribunal under Section 33(3) as far as the complainants in Complaint No. 01/2012 and 02/2012 and under Section 33(4) as far as Complainants in Complaint No. 03/2012 who were declared as protected workmen by the competent authority and as admittedly no such applications were filed before this tribunal/court seeking permission they having approached with these complaints they have to be adjudicated upon as if they were a dispute referred to this tribunal in accordance with the provisions of the act and submit the award to the appropriate government and cannot dismiss on such applications filed by the Respondent.

3. I have heard the arguments addressed by the Authorised Representative of the Complainants and learned advocate appearing for the Respondents and carefully gone through all the citations referred to by them. The learned authorised representative of the complainants urged that admittedly when the impugned actions touching the service conditions of the complainants in the respective complaints were effected during the pendency of the reference made by the Central Government for adjudication on the demands of the Employees of the Respondent on a dispute raised by its Employees union in C R 54/2007 on the file of this tribunal/court it was mandatory on the part of Respondent as contemplated Under Section 33(3) in respect of Complainants in Complaint No. 01/2012 and 02/2012 and Section 33(4) in respect of Commplainants in Complaint No. 03/2012 who were declared as protected workmen by the competent authority and when this court passed interim orders in the respective complaints they cannot be said to

be void-abintio (without jurisdiction) and the court has to pass an award treating the complaints as if they are reference by the competent authority under section 10 of the ID Act and cannot dismiss on such applications filed by the Respondents. In support of his contention/arguments he cited the following decisions:

1. The Bhavnagar Municipality *Vs.* Alibhai Karimbhai and others reported in 1977 scc (L&S) 264 (SC).

2. Order dated 28th Day of May 2010 of Hon'ble High Court of Karnataka in W P No. 8576/2008 in the case of M/s Madhura Coats Pvt. Ltd. *Vs*. The workmen of Madura Coats.

3. Gujarat Agricultural University *Vs*. All Gujarat Kamdar Karmachari Union, reported in 2009 (IV) LLJ 38L (SC).

4. Jaipur Jilla Sahakara Bhoomi*s*. Vikas Bank Ltd., reported in 2202 (1) LLJ 834 (SC).

5. Container Corporation of India Ltd. *Vs*. Sanjeev Kumar, reported in 2012 (II) LLJ 629 (Delhi).

6. Yellapa B. *vs.* Steel Authority of India Ltd., reported in 2203 (III) LLJ 1056 (Calcutta).

7. Statesman Ltd vs. First Industrial Tribunal West Bengal reported in 2012 (II) LLJ 577 (Calcutta) DB.

8. Top Security*Vs.* Subhash Chandra reported in 2012 (IV) LLJ. 542 Delhi (DB).

9. Order dated 12th day of March 2013 passed by Hon'ble High Court of Karnataka Division bench in the case of The Chief Traffic Manager *Vs.* M. Narayana Reddy BMTC in Writ Appeal No. 5738/2012 (L).

10. Arasu Virivu Pokkuvara Thu Cozhiyar Sangam *Vs.* State Express Transport Corporation Ltd., Chennai and others reported in 2006 (III) LLJ 245 (Madras) DB.

11. Bharatiya Employees Mazdor Sangha *Vs.*Industrial Tribunal, Chennai Reported in 2012 (II) LLJ 716 (Madras).

12. BPL Ltd., *Vs.*R Sudhakar reported in 2004 (II) LLJ 834 (SC).

13. Karnataka State Road Transport *Vs.* Asgar Pasha, reported in 1998 (II) LLJ. 61 (Karnataka).

14. Ranger Breweries *Vs.* State of Himachal Pradesh reported in 1998 (III) LLJ (Supp) 321 (HP) DB.

15. Portected Workmen: For full year from date of decision Batra Hospital & Medical Research Centre *Vs.* Batra Hospital Employees Union reported in 2013 (II) LLJ 132 (Delhi).

16. Grindlays Bank Ltd.*Vs.* CGIT 1981 SCC (L&S) 309 SC.

4. Interalia, the learned advocate appearing for the Respondent urged that the Interim orders in the respective complaints were passed by this tribunal to maintain status quo on the ground that whether CPRI is an Industry is yet to be adjudicated in C R 54/2007 and now this tribunal having passed an award holding that the CPRI/Respondent is not an industry and consequently does not come under the perview of the ID Act and jurisdiction of this tribunal the very reference made by the Central Government being held as had the present complaints do not survive and are liable to be rejected in limine. He also urged that in Writ Petition No. 14313/2012 (L-RES) in which the Order of Assistant labour Commissioner dated 18.04.2012 declaring the complainants in Complaint No. 03/2012 and others as protected workmen the Hon'ble High Court having disposed off that Writ Petition observing the said order being subject to the outcome of the proceedings before this tribunal in the pending reference *i.e.*. CR 54/2007 in view of this court holding in C R 54/2007 respondent being not an industry and rejecting the reference that order passed by the Assistant Labour Commissioner also do not come to the help of the complainant in Complaint No. 03/2012 and urged to allow his applications and to dismiss the complaints.

5. There cannot be any dispute that pending a valid reference the management in order to effect any change in the Service Condition of the workmen covered in such reference has to seek permission of the tribunal where the reference is pending and there cannot also be a dispute as to the decisions relied upon by the learned authorised representative of the complainants that the complaints filed under Section 33 A have to be treated as reference under Section 10 of the ID Act and conclude the same with Award. But only on receipt of a reference for adjudication it cannot be said it is a valid reference and it is left open to the adjudicating forum to decide having regard to the contention taken by the parties to decide whether it is a valid reference. In the instant case the mother dispute covered in C R 54/2007 is rejected coming to a conclusion that the Respondent is not an industry and do not come under the perview of the industrial dispute act and jurisdiction of this tribunal/court upholding the contention of the Respondent in the Reference that it is not an industry and fall under the perview of the industrial dispute act it is a determination that the reference is not valid as such there is no meaning in proceeding with these complaints on merits as urged by the learned advocate appearing for the Respondent. It is seen from the Order passed by the Hon'ble High Court of Karnataka in W P No. 2604-2605/2013 (L-TER) wherein the interim order passed by this tribunal in Complaint No. 03/2012 under which direction was given to the Respondent to pay the complainants wages @ last payment made to them before the impugned order of termination from service from the date of complainant *i.e.* 25.06.2012 till the final adjudication of the complaint and

also to allow the complainants to stay in the quarters in their occupation while holding that the tribunal which is yet to decide its jurisdiction in the matter ought not to have passed such a interim order directing the Respondent to pay the last wages drawn is wholly inappropriate and so far as the interim order directing the complainants is concerned is to be sustained makes its clear that the maintainability of these complaints depends upon the determination by this tribunal regarding jurisdiction to try or adjudicate the demands raised in C R 54/2007. Therefore, now in view of this tribunal's/court's determination that CPRI/Respondent is not an Industry and consequentially does not fall under the perview of the ID Act and jurisdiction of this tribunal/court these complainants cannot get adjudicated their grievances raised in these complaints under the hands of this tribunal/court. Under the circumstances, as rightly urged on behalf of the Respondents in my considered view all the three complaints deserves to be dismissed. In view of the catena of decisions relied upon by the Authorised Representative of the Complainants such an application under Section 33 A has to be ended with Award this very Order can be treated as Award in the respective complaints and has to be sent for publication to the Government which made the reference in C R 54/2007. In the result, I pass the following:

**ORDER**

The three separate applications filed by the Respondent in Complaint Nos. 01/2012, 02/2012 and 03/2012 dated 05.06.2013 are Allowed and consequently in view of the Award passed in C R 54/2007 holding that CPRI/ Respondent is not an Industry coming under the preview of the ID Act and the jurisdiction of this tribunal/court the complaints are Dismissed and the interim orders passed in the respective complaints are vacated. This Order shall be treated as an Award in complaint No. 01/2012, 02/2012 and 03/2012 and will come into effect from the date of notification from the Ministry and shall be sent to Ministry of Labour and Employment for publication in the gazette. No order as to cost under the circumstances.

(Dictated to U D C, transcribed by him, corrected and signed by me on 15th July 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

**का॰आ॰ 703.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्कियोलॉजिकल सर्वे ऑफ इंडिया के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 82/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/9/96-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

**S.O. 703.**—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 82/ 1997) of the Central Government Industrial Tribunal/Labour Court-II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Archaeological Survey of India and their workman, which was received by the Central Government on 28/1/2014.

[No. L-42011/9/96-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II**

**PRESENT:** SHRI HARBANSH KUMAR SAXENA

ID No. 82/97

Sh. Putti Lal And Ors.

**Versus**

Archaeological Survey of India.

Ex-Parte Award

The Central Government in the Ministry of Labour *vide* notification No. L-42011/9/96/-IR (DU) dated 24/6/97 referred the following industrial Dispute to this tribunal for the adjudication:—

> "Whether the termination of the Management of Archaeolgical Survey of India in not granting permanent status/regularization to S/Sh. Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali and Khedan Pradsad is legal and justified ? If not, what relief the workman is entitled for?"

On 16.07.97 reference was received in this tribunal. Which was register as I.D. No. 82/97 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

**After service of notice workmem/claimant filed claim statement on 2, September, 1997.**

On the basis of grounds mentioned in claim Statement Claimant/Workmen prayed as follows:—

(a) Award grant of permanent status/regularization to S/Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali and Khedan Prasad in the pay scale of Rs. 750-940.

(b) Any other award /order which this Hon'ble Tribunal may deem fit and proper to meet the end of justice.

**Against aforesaid claim statement management filed Written Statement.**

On the basis of grounds mentioned in Written Statement management prayed as follows:—

In the light of facts mentioned above the present petition of devoid of any merit, having no basis for any direction, as prayed by the applicants, the Tribunal may like to dismiss the same. It is so prayed, accordingly.

Workmen is reply to Written Statement filed Rejoinder. Wherein they denied the allegations of Written Statement filed by management and reaffirmed an averments made in their claim statement.

In Support of its case claimant/workmen filed Affidavit of Witnesses Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram Ravinder, Smt. Phool Kali and Khedan Prasad in their evidence.

In Support of its case management filed affidavit of Witness namely H.B. Singh in its Evidence.

Thereafter my Ld. Predecessor heard argument of the Ld. A/R's of the parties and passed Award on 13.5.2008. Wherein he passed following operative portion of the Award.

> "The Action of the management of Archeological Survey of India in not granting permanent status/ regularization of S/Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali and Khedan Prasad is neither legal nor justified. The management should reinstate the workmen alongwith 25% back wages within two months from the date of Publication of the Award.
>
> That the another reference of the same workers was referred by the appropriate Government for adjudication *vide* order no. L 42011/2297/IR(DU) dated 27.09.1987 with the following terms:—
>
> "Whether the termination of the Management of Archaeological Survey of India in not granting permanent status/regularization to S/Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali and Khedan Prasad is legal and justified? If not, what relief the workman is entitled for?"

4. The above reference is dealt in I.D. No. 156/1997 and the Hon'ble Tribunal vide its Award dated 20.04.2004 awarded as under:—

> "The Action of the management of Archeological Survey of India in not granting permanent status/ regularization to S/Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali and Khedan Prasad is neither legal nor justified. The Workmen are entitled to be reinstated at their previous post with 25% back wages and no junior to them should be regularized. They should be regularized as and when vacancies arise and the Horticulture Department is directed to create vacancies for regularization as they have worked for 8 to 14 years in their department.

That the Management has filed the writ petition © No. 7707 /2007 against the award dated 13.5.2008 dealt in I.D. No. 82/1997, and the Management also challenged the Award on 27.09.1997 in Writ Petition 16887/2004 against I.D. No. 156/1997. The workmen also challenged the same set of workmen being aggrieved by the part and the same award whereby only 25% back wages have been awarded in their favour in Writ Petition © 4739/45/2005 titled Putti Lal & others *vs.* Archaeolgical Survey of India. Shri Putti lal & others have not full minimum wages fixed under Minimum wage Act 1948 *w.e.f.* from the date of Award dated 20.04.2004 by the Hon'ble High Court under Section 17B of full wages as maintenance allowance during the pendency of the Writ Petition filed by the Management against the Award dated 20.04.2004.

The Hon'ble High Court of Delhi through common order dated 10.01.2013 remanded back the case to the Industrial Tribunal. The operative paras of Judgement are reproduced as under:—

"14. The aforesaid are aspects to be established by record. The Industrial Adjudicator has not examined the said issue.

15. For all the aforesaid reasons, in my view, this is a fit case where the impugned award dated 20.04.2004 should be set aside and the matter should be remanded back to the Labour Court for examination of the following issues:—

(i) Whether there was breach of Section 25-G of the Indusrial Disputes Act 1947 in the facts of the case, and if so, to what effect?

(ii) Whether there was breach of Section 33 on the part of the management, and if so, to what effect?

16. It is directed accordingly.

17. In view of the aforesaid position, the writ petition preferred by the workmen being W.P. (c) No. 4739-45/2005 are withdrawn as the issue with regard to the back wages shall also to be considered afresh in the light of the funding that may be returned on the specific aspects in terms of this order.

18. So far as the challenge to be award dated 13.5.2008 in W.P. (C) No. 7707/2009 is concerned, I may note that by the said impugned award, the Industrial Adjudicator has held that the action of the management in not granting permanent status/regularization to the respondent is not legal or justified. This award also cannot be sunstained at this stage as this issue would depend upon determination afresh to the remanded issues in

respect of the earlier award dated 27.09.1997. Accordingly, the award dated 13.05.2008 is also set aside leaving in open to the parties to urge their submissions in respect of the reference dated 24.06.1997 bearing letter No. L-42011/9/96-IR (DU) made by the appropriate Government. The parties are left to bear their own costs.

19. Considering that the peresent is very old case, disposal of this case shall be expedited by the Industrial Adjudicator and the same shall be concluded preferably within six months.

20. Let the parties appear before the concerned Court/successor Court on 04.02.2013.

I have heard the argument of Ld. A/R for Workmen as case proceeded Ex-Parte against management.

In the light of contention of Ld. A/R for the workmen I perused the pleadings mentioned in Claim Statement, Written Statement and Rejoinder and evidence of parties on record including rulings cited on behalf of workmen, settled law on the point & relevant provision of relevant law including other material on record.

The CGIT-cum-Labour Court No. 1 decided the I.D. No. 156/1997 *vide* its award dated 31.05.2013 reinstated the workmen S/Shri Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Smt. Phool Kali were reinstated with 20% back wages.

That now this Tribunal has to decide the I.D. No. 82/1997 of reference for grant of permanent status/ regularization to the above workmen which is remanded by the Hon'ble High Court of Delhi *vide* their order dated 10.01.2003. As per para 18 this Hon'ble Tribunal will have to decide the grant of permanent status/regularization to the workmen. Now, the CGIT-cum-Labour Court has held that the termination of the workmen is illegal and their service were reinstated with 20% back wages from the date of their termination. The full particulars of the workmen are given as under:—

| Sl. No. | Name | Father/Husband's Name | Year of Engagement |
|---|---|---|---|
| | S/Shri | S/Shri | |
| 1. | Putti Lal | Shukru | 1982 |
| 2. | Babu Lal | Nanaku | 1986 |
| 3. | Satya Dev | Alagu | 1988 |
| 4. | Hare Ram | Ram Nath | 1989 |
| 5. | Ravinder | Babu Lal | 1989 |
| 6. | Phool Kali | Mewa Lal | 1990 |
| 7. | Khedan Prasad | Mohan Shah | 1990 |

That it is proved as per evidence that the most junior person S/Sh. Dalbir Singh and Suresh Prasad who were recruited only in the year 1992 as daily wages Mali are allowed the temporary status *w.e.f.* 1.09.1993 with all allowances attached with the post of Beldar in regular category except regularization. Accordingly. Putti Lal, & 6 others were junior to them are entitled atleast temporary status with all allowances attached with the post of Mali as Group 'D' employees *w.e.f.* 1.09.1993 in the pay scale of 750-940 revised from time to time.

That the management cannot break the seniority of the same category i.e. Mali while refusing atleast temporary status *w.e.f.* 1.09.1993 in accordance with their date of initial employment being Sh. Putti Lal & 6 others are senior to S/Sh. Dalbir Singh & Suresh Prasad.

That non-regularization is also unfair labour practice and even Sh. Dalbir Singh & Suresh Prasad who were recruited in the year 1992 and were junior to the respondent were given temporary status in the year 1994 *w.e.f.* 1.09.1993 in the pay scale to Rs. 750-940. The operative para 8 of CWP No. 7707/2009 is reproduced as under:—

"8. The impugned award proceeds primarily on the basis of Section 25-G of the Act. In this regard, the averment of the respondents/workmen was that two persons, namely Dalbir Singh and Surender Prasad, who were recruited in the year 1992 and were junior to the respondent, were given temporary status in the year 1994 w.e.f. 01.09.1993 as the pay scale Rs. 750-940, whereas the said worker had been left out. The Industrial Adjudicator held that Section 25(G) & (H) were applicable to the respondent and retention of junior, while terminating the services of the respondents amounted to unfair labour practice under Section 25(RA) of the Act.

That item 10 in 5th Schedule u/s 2(ra) of I.D. Act the non-grant of permanent status and privilege of permanent workmen is an unfair labour practice. The said Section is as under;

10.To Employ workmen as 'Badli'casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.''

"That even no grant of temporary status and regularization is a discriminatory as the Management granted the temporary status to S/Shri Dalbir Singh & Suresh Prasad in the year 1997 *w.e.f* 1.09.1993 in the pay scale of Rs. 750-940 revised from time to time as both the workmen were initially employed in the year 1992 and ignored even the said status to the workmen connected with the dispute as they as senior to these two workmen. The date of employment of the workman Sh. Putti Lal & others as their details are mentioned in para 8 hereinabove.

That the Hon'ble Supreme Court in the case of Bal Kishan *Vs.* Delhi administration and another reported in (1900) 1LLJ/61. The relevant para 10 of the said judgment is reproduced as under:

10.In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution."

That the Division Bench of Hon'ble High Court of Delhi in LPA 13/2008 titled the Director General (Works), CPWD Vs. Devinder Singh has held on 12.02.2008 that the senior persons are entitled to regularized from the date on which the services of junior were regularized. The operative para 4 of the said judgment is reproduced as under:

> "The parties filed their written statement on the basis of which evidence was allowed to be led. After receiving evidence the learned industrial Adjudicator proceeded to decide the matter on the basis of the evidence available on record. The learned Industrial Adjudicator passed his award on 13th June 2006 holding that the action of the appellant management CPWD in not granting the services of the respondent Sh. Devinder Singh, Wireman w.e.f. 31th March 1993 is neither legal nor justified and also that he is entitled to be regularized w.e.f 31st March 1993. *i.e.* the date on which the services of his junior Sh. Hari Shankar were regularized. The learned Industrial Adjudicator also directed that the respondent should be paid all his arrear which accrued to him on his regularization w.e.f 31st March 1993.

That the Division Bench of Hon'ble High Court of Delhi in the matter "Union of India Director General Works, CPWD Vs. Vijay Chand"W.P. (c) 5354/2006 and C.M. No. 4355/2006 has held on 04.04.2006 that similarly situated workers cannot be discriminated. The operative para 4 of the said judgment is reproduced as under:

"4 . The learned counsel for the petitioner has sought to reply on the judgeent of this Court in LPA No. 653-93/2005 titled Smt. Vandana Singh *Vs.* NDMC and particularly paragraph 6 thereof, dealing with the directions for regularization of the temporary employees. The Tribunal has directed for consideration of the respondent's case for regularization in the same manner as other three persons similarly situated. Accordigly, the judgment of the Tribunal is distinguishable. We have also noticed the fact that the impugned order was passed on 15th September 2005 granting the petitioner three months time to consider the case of the respondent and the said period expired on 15th December, 2005. The writ petition has been listed and heard today for the first time. That is another factor why we are not inclined to give discretionary relief to the petitioner under Article 226 of the Constitution of India. We are also informed that the petitioner has only been bestirred into action on the filing of the contempt petition by the respondent. Accordingly, the writ petition is dismissed in limine.

That the Union of India and other again filed Special Leave to Appeal (Civil) No(s) 9200/2007 against the judgment and order dated 4.4.2006 titled "Union of India and others *Vs.* Vijay Chand". The said SLP was also dismissed by the Hon'ble Supreme Court dated 7.01.2011 The operative para of the order dated 7.01.2011 is reproduced as under:

> "In our view, the direction given by the Tribunal for consideration for the respondent's cases for regulatization of service, as was done in the cases of other three similarly situated persons, was legally correct and justified and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. In the facts and circumstances of the case, we do not consider it to be a fit case for exercise of jurisdiction by this Court under Article 136 of the Constitution. The special leave petition is accordingly dismissed."

In the light of law declare by the Hon'ble Supreme Court and decision of Hon'ble High Court of Delhi as referred Supra and evidence on record. It is crystal clear that the action of management of Archeological Survey of India in not granting Temporary Status/Regularization to Sh. Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Khedan Prasad, Smt. Phool Kali is neither legal nor justified and the action of the management is also unfair labour practice as mentioned in Section 2(ra) I.D. Act.

The Workmen were performing the duty between 23 years to 32 years. So. there is no justification to refuse them to give temporary status regularization.

Thus the workmen Shri. Putti Lal, Babu Lal, Satya Dev, Hare Ram, Ravinder, Khedan Prasad, Smt. Phool Kali are entitled to be granted temporary status in the pay scale of Rs. 750 to 940 with pay scale and all allowances. Which were revised from time to time *w.e.f* 1.09.1993 when their juniors *i.e.* Shri. Dalbir Singh & Suresh Prasad Beldar were granted temporary status. They are regularized with all consequential benefits from the date when Shri. Dalbir Singh & Suresh Prasad Mali were granted temporary status *w.e.f.* 1.09.1993.

Reference is liable to be decided in favour of workman and against management. which is accordingly decided.

Ex-parte Award is accordingly passed.

Dated:- 13/01/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

**का॰आ॰ 704.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वुमन एंड चिल्ड वेलफेयर बोर्ड के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 78/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/7/2006-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

**S.O. 704.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No 78/2006) of the Central Government Industrial Tribunal/Labour Court-II Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Woman and Child Welfare Board and their workman, which was received by the Central Government on 28/01/2014

[No. L-42012/7/2006-IR (DU)]
P. K. VENUGOPAL Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI**

**PRESENT:** SHRI HARBANSH KUMAR SAXENA

**ID No. 78/2006**

Smt. Rani

*Versus*

Woman and Child Welfare Board

**AWARD**

The Central Government in the Ministry of Labour *vide* notification No. L-42012/7/2006-IR(DU) dated 18/09/2006 referred the following industrial Dispute to this tribunal for the adjudication:—

> "Whether the action of the management of Women and Child Welfare Board, Faridabad in terminiating the services of Smt. Rani w/o Sh. Ram Kumar, Peon-Cum-Sweeper *w.e.f.* Jan 2002 is just and legal? If not, to what relief the applicant is entitled to"

On 03/10/2006 reference was received in this tribunal. Which was register as ID No. 78/2006 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witneses.

After service of notice workman/claimant filed claim statement on 12/12/2006. Wherein he stated as follow:—

1. That the appropriate Government in the Ministry of Labour, Govt. of India, Shram Shakti Bhawan, New Delhi referred the dispute to this Hon'ble Tribunal-cum-Labour Court for adjudication *vide* order No. L-42010/7/2006 IR(DU) dated 18/09/2006 with the following terms:

**SCHEDULE**

> "Whether the action of the managment of Women and Child Welfare Board, Faridabad in terminating the services of Smt. Rani w/o Sh. Ram Kumar, Peon-Cum-Sweeper *w.e.f.* Jan. 2002 is just and legal? If not, to what relief the applicant is entitled to?"

2. That the applicant joined the respondent Department as a Peon-cum-Sweepers in the Sub-Office at Faridabad on 01/041991 on full time basis.

3. That the application had been drawing salary @ Rs. 2000/- per month regularly since the day of her joining.

4. That the work of the applicant has been satisfactory and never any charge-sheet, a notice or even a warning had been issued to her.

5. That the applicant workman has completed 240 days and as such she became a regular employ of the respondent department and thereafter she has completed uninterrupted regular service of 14 years.

6. That the respondent central office being agriculture produce market committee is an industry under the I.D. Act and hence this Hon'ble Tribunal has the jurisdiction to try this case.

7. In the case of principal of Chief Conservator of Forest Versus Smt. Pramjeet Kaur& others, 1995 and Baljit Singh Versus The State of Haryana & others 1995 LLR, page No. 504, the Punjab & Haryana High Court has clearly given judgment.

"Forest, PWD Central works division* (B&R) of the Punjab & Haryana and Health will be an industry U/s. 2/j of the 947 of I.D. Act."

8. So, the question of maintainability and jurisdiction are well answered and settled.

9. That the applicant workman had not been paid even the minimum wages declared by the Haryana Government. Even the leave and other legal benefits were not accorded hence the department had been victimizing the applicant and that tentmounts to illegal labour practice.

10.That the applicant submitted may requests though the proper channel to the department that she may be confirmed and given the increments and other legal benefits prescribed by the Government the letter dated 16-06-2001

is the request letter for confirmation being annexed as Annexure 1 similarly the letter sent on 01-06-2004 was replied under serial No.1/CFMED/Faridabad/02-03/32 dated 04-06-2004 to the Deputy Commissioner, Faridabad for requesting for providing the details of wages for various categories of workers and employees in Haryana. The Deputy Commissioner, Faridabad had sent the details of the salary and wages but with no effects and this respect and hence the applicant lady was constrained to file the complaint and thereafter she was relieved of her services without any notice, charge sheet.

11. That the service of the workman has been dismissed illegally and arbitrarily without any notice, charge sheet and no domestic enquiry, which was mandatory for the dismissal was conducted. Shockingly the applicant was not even given the legal privilege of defending herself legally before dismissal. No dismissal letter was issued nor any retrenchment benefit U/s 25 F was paid to the workman on this count only the dismissal is illegal and hence the set-aside. Even the mandatory clause of 25N was not adhered to and thus the workman was crucified by the whims and fancies of the arbitrary orders of the respondents department.

On the Basis of which he prayed that workman, being unemployed so far, may be reinstated with full back wages and continuity of services, it is, further prayed that any other relief the Hob'ble Court may deems fit may be granted to the poor widow.

**Against claim statement management filed following written statement:—**

**Preliminary Submissions/Objections:**

1.That the present application is not maintainable as the respondent is not an 'Industry' within the meaning of the Industrial Disputes Act, 1947. The activities carried out by the replying respondent cannot be termed to be included within the purview of the Industrial Disputes Act, 1947.

2.That the workman cannot claim regularization or continuation in the services of the replying respondent as a matter of right in absence of scheme/policy of the Government of contrary to the recruitment rules.

3.That the claimant is not entitled to claim parity in wages or otherwise with the regular employee under the replying respondent in view of the settled law of the land on the subject.

4. That the claimant had merely been working as a part time daily wager and there has not been any sanctioned post nor she has been appointed to any sanctioned post including the one, referred therein the claim as well as the reference dated 18.08.2006 and therefore the claim under reply is not maintainable. It is submitted that it is trite that nobody can claim regularization dehorse the rules and particularly in absence of the sanctioned post. Moreover, there is no scheme which gives any right to the claimant to claim regularization. Even the scheme of 10.09.1993 issued by DOPT for grant of temporary status is not applicable to the part time casual workers. Reliance is made on the law laid down by the Hon'ble Apex Court in "Secretary, State of Karnataka *Vs* Uma Devi & others." Reported in 2006(4) SCC1 and further in "Secretary, Ministry of Communication Vs. Sakubai," reported in 1998 (9) JT 297.

5.That the reference dated 18.08.2006, referred therein the statement of claim, is also bad inasmuch as the claimant had quit her engagement under the replying respondent as part time casual worker on her own accord and not terminated as quoted in the reference dated 18.08.2006. Besides, the claimant was never appointed as Peon-cum-Sweeper, as quoted in the reference dated 18/08.2006.

**Parawise reply:**

1.That the contents of corresponding para, being matter of record, need no reply. It is submitted that the workman was working as casual worker on daily wages and had quit the same on her own accord *w.e.f.* March,2001. It is submitted that her services were not terminated as she was purely a casual worker and not a regular Central Government Employees. It is also wrong to suggest that the workwoman was terminated from service *w.e.f* January, 2002 as it is evidence that she was a daily wages casual worker and had left the job in March, 2001 on her own. The question of affording relief to her as a casual worker does not reply. Thus, the question of affording relief to her does not arise.

2.That in reply to the averments made in the corresponding para, it is submitted that the workwoman was engaged as a casual worker on daily wages basis rated notified by the State Government *w.e.f.* 1.5.1991 and not as a Peon-cum-Sweeper from 01.04.1991 as mentioned in the statement of claim.

3.That in reply to the averments made in the corresponding para, it is submitted that the casual worker engaged by the Central Government on daily wages basis are paid the wages on account of daily work done by them and not monthly salary.

4. That in reply to the averments made in the corresponding para, it is submitted that the workwoman was engaged purely as a casual worker. She was not appointed on a Group 'D' post by the Central Government.

5.That the contents of corresponding para are wrong misleading and misconceived and hence vehemently denied. The workwoman does not become a regular employee of the respondent even if she has rendered interrupted or uninterrupted service for any period of time as a casual labourer. It is submitted that as per order of Ministry of Finance/Ministry of Home Affairs and Department of Personnel & Training no casual labour,

registered with Employment Exchange should be appointed to posts born on the regular establishment of Central Government. It is submitted that the workwoman was not engaged after sponsoring through Employment Exchange and hence she is not eligible for regular appointment as Group 'D' employee.

6. That the contents of corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is submitted that the respondent is a sovereign attached office of Ministry of Women & Child Development (erstwhile Ministry of Human Resource Development) and does not come under Industry category. It is further submitted that the respondent has nothing to do with Agriculture Produce Market Committee whatsoever and hence I.D. Act does not apply in this matter.

7. That in reply to the averments made in the corresponding para, it is submitted that the judgment, referred and relied upon by the workman, is not applicable in the facts and circumstances of the present case.

8.That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is reiterated that the claim under reply is not maintainable before this Hon' ble tribunal.

9.That the contents of corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is submitted that prior to her engagement as casual worker, the workman was told that she would be paid wages decided by the HQ, New Delhi on the basis of requirement of work. It is understandable that the workman had no objection with regard to the payment of wages and therefore she never raked up this issue during the period she worked as a casual worker. It is submitted that leave and other benefits are not admissible to casual labour engaged on daily wages basis. Hence, the charge of victimization and illegal labour practice is wrong, misleading and vehemently denied.

10.That the contents of the corresponding para, except those being matter of record, are wrong, misleading and misconceived and hence vehemently denied. It has been made amply clear that being purely a casual worker unsponsored by Employment Exchange, the workwoman is not eligible for regular appointment as Group `D' employee nor she can avail of the benefits such as increments etc. Which are allowed only to a regular Central Government employee. It is submitted that he workman had quit as a casual worker on her own accord. The question of any notice or charge sheet is irrelevant as she was not a regular Central Government Employee.

11 .That in reply to the averments made in the corresponding para, it is reiterated that the workwoman was engaged purely as casual worker without having been sponsorship of Employment Exchange. As such, the issue of notice, charge sheet, domestic enquiry are not pertinent and realistic. As clarified *vide* para 6 & 8 hereinabove, the I.D. Act is not applicable in the matter and the claim is liable to be dismissed.

On the basis of contents mentioned in aforesaid paragraphs Workwoman Prayed that the claim is devoid of merits and deserves NIL award in the matter.

**Workman filed rejoinder wherein she stated as follows:—**

**REPLY TO THE PRELIMINARY OBJECTIONS OF THE MANAGEMENT**

1.That the preliminary objection of the Management that the present application is not maintainable as the Respondent is not an 'industry' within the meaning of the Industrial Dispute Act 1947 is wrong hence denied. It is submitted that the work and activities of the Management is covered under the provisions of Industrial Disputes Act 1947.

2.That the preliminary objection of the management that the management cannot claim regularization or continuation in service etc. is also wrong, hence denied. It is submitted that dispute referred by the Ministry of Labour relates to the termination of the services of the workman and termination of individual workman is Industrial Dispute u/s 2A of the Industrial Disputes Act.

3. That the preliminary objection of the Management that the claimant is not entitled to claim parity in wages etc. is also factually incorrect, hence denied. It is further submitted that the dispute is related to the illegal termination of the workman.

4.That the preliminary objection of the Management that claimant had merely worked as part time daily wager etc is wrong hence denied. It is submitted that he workman has performed the full time job and management terminated her services without following the procedure of law. It is also submitted that reliance referred by the Management is not applicable in the present case.

5.That the preliminary objection of the Management that the claimant worked as part time casual worker on her own accord is wrong, hence denied. It is submitted that he Management violated all the provisions of natural justice while terminating the services of the workman *w.e.f.* January 2002.

**REJOINDER ON MERIT:**

1-11 That the written statements of the Management in these para are factually incorrect, wrong, hence denied. The respective para of statement of claim are restated and reaffirmed.

On the basis of contents mentioned in aforesaid written Statement of Management kindly be dismissed in favour of the workman.

My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:—

"Whether the action of the management of Women and Child Welfare Board, Faridabad in terminating the services of Smt. Rani W/o Sh. Ram Kumar, Peon-Cum-Sweeper *w.e.f.* Jan 2002 is just and legal? If not, to what relief the applicant is entitled to?"

**Written Argument Behalf of the workman are as follows:**

1.That the appropriate Govt. in the Ministry of Labour referred the following dispute before this Hon'ble CGIT-cum-Labour Court for the Industrial adjudication.

> "Whether the action of the management of Women and Child Welfare Board, Faridabad in terminating the services of Smt. Rani w/o Sh. Ram Kumar, Peon-Cum-Sweeper *w.e.f.* Jan 2002 is just and legal? If not, to what relief the applicant is entitled to?"

2.The Management himself admitted that the workman was engaged as casual worker on daily wages basis and payment were made as per minimum wages notified by the State Govt. *w.e.f.* 01-04-1991 *i.e.* in para 2 of the written statement and also admitted that the workman performing his duty *w.e.f.* 1-04-1991. The management did not deny the Statement of Claim in para 5 is that the workman performed the duty continuously and completed 12 years and performed his duty continuously of 240 days in uninterrupted and this fact is also admitted by the Management in his written Statement in para 5. The dispute of the workman is only related to termination *w.e.f.* January 2002 and not regularization of her services. In the cross-examination the Management witness MW-1 said that Smt. Rani, workman repeatedly engaged for 89 days during this period and sometimes she was also engaged for three months etc. which part contradict the written statement filed by the Management in para 2,3,4,&5. The stand of the management in his cross-examination that the workman was given artificial break. The Management witness MW1 admitted that the breaks were given as per rules. Extract of the cross-examination MW-1 is as under

> "It is wrong to suggest that I have no knowledge either personal or official in this case. No notice/ notice pay and compensation was given to Smt. Rani as no such things is given in cases like that of Smt. Rani Breaks were given as per rules. It is wrong to suggest that the breaks were given with a view to deprive Smt. Rani of her chance to become a regular employee. The entire record of engagement of Smt. Rani is with the Department. Smt Rani never demanded any official record and no record was given to her. I have no knowledge if the Conciliation Officer had demanded the record and the Department had failed to do so there. It is correct that our department is related to Woman and Child Welfare. It is wrong to suggest that I have no knowledge of the case or that I have deposed falsely.
>
> 3.That as per Section 25B of ID Act the cessation of work which is not due to any fault on its part of the workman is termed as continuous service. The stand of the Management that the workman given break after 89 days in the cross examination of MMI is disapproved by the Hon'ble High Court of Allahabad (1993-11 LLJ 1064) between Ram Kumar Rai *Vs*. State Bank of U.P. in para 11 which is reproduced as under.

"11. The practice of giving artificial break has been disapproved by the Supreme Court in the case of Rabinarayan Mohapatra Vs. State of Orissa 1991-II-LLJ-62. It was held that it was arbitrary and discriminatory. In that case the appointment of a teacher was made on 89 days basis with one day's break. It deprived the teacher of his salary for the period of summer vacation wholly arbitrary and suffered from the vice of discrimination."

4.That another stand of the Management that the workman is part-time or casual employee etc. so she is not covered under the Industrial Disputes Act 1947. The Hon'ble Supreme Court in the matter Devender Singh *Vs*. Municipal Council, Sanaur reported in AIR 2011 Supreme Court 2532 as held that part time employee, contractual employee, temporary or casual employee are workman. The operative para 13 &14 of the judgment is reproduced:

> "13.The source of employment the method of recruitment, the terms and conditions of employment/ contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is workman within the meaning of Section 2(s) of the Act."

14.It is apposite to observe that the definition of the workman also does not make any distinction between Full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

5. That another stand of the Management that the Management is not an industry under the provisions of 2(j) of Industrial Dispute Act. In this connection it is submitted that the work performed by Smt. Rani is peon-cum-sweeper under the Management is not a sovereign function as per the judgment of Bangalore Water. The work of the Management is covered under the Child Development and Health Maternity so she is a workman within the meaning of Section 2(s) of I.D. Act 1947. This stand is affirmed by the Division Bench of Hon'ble High Court of

Delhi. In LPA No.49/2008 in the matter Sunita Walian *Vs.* Director. Govt of NCT of Delhi which is related to the work of Health maternity and child welfare and the Hon'ble High Court has held that the appellant (Sunita Baliyan) is a workman within the meaning of 2(s) of Industrial Disputes Act 1947. The operative para at page 18 of the said judgment is reproduced as under:

> "In her cross-examination she has denied that she was appointed on ad hoc basis against a leave vacancy. Ms. Hem Lata has admitted in her cross-examination that no appointment letter was given to the appellant and no period was indicated at the time of her employment. She also admitted that the word "ad hoc" was not used while appointing her in the job. Consequently, the Labour Court has held that the appellant is a workman within the meaning of Section 2(s) of the Industrial Disputes Act".

In view of the above, the workman Smt. Rani is entitled to be reinstated with full back wages w.e.f. January 2002 in the minimum wages fixed for unskilled workman revised from time to time by the Faridabad District Authority.

**Written Argument Behalf of the Management are as follows:**

1. I say that I have been authorized by the Competent Authority to submit this Argument on behalf of the respondent/Management.

2. I say that I am well acquainted with facts and circumstance of the present case in my official capacity.

3. I say that I have read over the contents of the present case and I state that the contents mentioned therein to the extent they are inconsistent with the submission made hereinafter in this written statement are incorrect and denied. Unless any admitted or traversed the same may be treated as denied.

4. I say that the present case/dispute of Smt. Rani is not maintainable as the respondent is not industry within the meaning of the Industrial Dispute Act 1947 U/S 2(j). The activities carried out by the replying respondent cannot be termed to be included within the purview of the Industrial Dispute Act 1947.

5. I say that the workman cannot claim regularization or continuation in the service of the replying respondent as a matter or right I absence of Scheme/policy of the Government or contrary to the recruitment rules.

6. I say that the claimant is not entitled to claim parity in wages or otherwise with the regular employee under the replying respondent in view of the settled law of the land don the subject.

7. I say that the claimant had merely been working as a part time daily wager as per requirement of work there has not been appointment to any sanctioned post nor she has been appointed to any sanctioned post including one referred therein the claim as well as the reference dated 18.08.2006 and therefore the present dispute of workman is not maintainable. It is submitted that it is true that no body can claim regularization, the rules and particularly in absence of the sanctioned post. Moreover there is no scheme which give any right to the claimant to claim regularization. Even the scheme of 10.09.1993 issued by DOPT for grant of temporary status is not applicable to the part time casual workers. Reliance is made on the Law laid down by the Hon'ble Apex Court in Secretary, State of Karnataka V/s Uma Devi and three ors reported in 2006 (4) SCC 1 and further Secretary Ministry of Communication.... V/s.. Sakubai reported in1998 (9) JT 297.

8. I say the reference dated 18.08.2006 referred therein the statement of claim is also bad in as much as the claimant had quite her engagement under the replying respondent as part time casual worker on her accord and not terminated as quoted in the reference dated 18.08.2006. Besides the claimant was never appointment as Peon-cum-Sweeper as quoted in the reference dated 18.08.2006.

9. I say that the contents of para 1 is matter of record. It is submitted the same on her own accord w.e.f. March 2001. It is submitted that her services were not terminated as she was purely a casual worker and not regular Central Government Employee. It is wrong to suggest that the workman was terminated from service *w.e.f.* January 2002 as it evident that she was a daily wages casual worker and had left the job in March 2001 on her own. The question of affording relief to her as a casual worker does not reply. Thus, the question of affording relief to her does not arise.

10. I say that in reply to the averments made in the corresponding para, it is submitted the workman was engaged as a casual worker on daily wages basis rates notified by the State Government w.e.f. 1.04.1991 and not as a Peon cum Sweeper from 01.04.1991 as mentioned in the statement of claim.

11. I say that in reply to averments made in the corresponding para, it is submitted that the casual worker engaged by the Central Government on daily wages basis are paid the wages on account of daily work done by them and not monthly salary.

12. I say that in reply to the averments made in the corresonding para 4 it is submitted that the workman was engaged purely as a casual worker. She was not appointed on a group D post by the Central Govt.

13. I say the contents of para 5 are wrong, misleading and misconceived and hence vehemently denied. The workman does not become a regular employee of the respondent even it she has rendered interrupted or in interrupted service for any period of time as casual labour. It is submitted that as per order of Ministry of Finance/of Home Affairs and Department of Personal and Training to casual Labour registered with Employment, exchange should be appointed to post born on regular establishment

of Central Government. It is submitted that the workman was not engaged after sponsoring through Employment Exchange and hence she is not eligible for regular appointment as Group D Employee.

14. I say that the contents of para 6 are wrong and hence vehemently denied.It is submitted that the respondent is a sovereign attached office of Ministry of Women Child Development (erstwhile Ministry of Human Development) and does not come under Industry category. It is further submitted that the respondent has nothihg to do with agricultural produce market Committee whatsoever and hence ID Act does not apply in this matter.

15. I say in reply to the averments made in corresponding para no. 7 it is submitted that the judgement, referred and relied upon by the workman, is not applicable in the facts and circumstances of the present case.

16.-17. I say that the contents of the corresponding are wrong and concocted one. It is reiterated that the claim under reply is not maintainable before this Hon'ble Court.

18.I say that the contents of para 18 of the corresponding are wrong and concocted one. It is submitted that prior to her engagement as casual worker the workman was told that she would be paid wages decided by the HQ New Delhi on the basis of requirement of work. It is understandable that the workman had no objection with regard to the payment of wages and therefore she never raked up this issue during the period she worked as a casual worker. It is submitted that leave and other benefits are not admissible to casual labour engaged on daily wages basis. Hence the charge of victimization and illegal Labour practice is wrong and vehemently denied.

19. I say the contents of para 10 except those being matter of record are wrong misleading and misconceived and hence vehemently denied. It has made amply clear that being purely a casual worker unsponsored by Employment, the workman is not eligible for regular appointment as Group D Employee nor she can avail of the benefit such as increments etc. which are allowed only to a Regular Central Government employee. It is submitted that the workman had quit as a casual worker on her own accord. The question of any notice or charge sheet is irrelevant as she was not a regular Central Government Employee.

20. I say that in reply the averments made in the corresponding para 11 it is reiterated that the workman was engaged reiterated that the workman was engaged purely as casual worker without having been sponsorship of Employment Exchange. As such, the issue of notice charge sheet, domestic enquiry are not pertinent to realistic. As clarified *vide* para 6 and 8 herein above, the ID Act is not applicable in the matter and claim is liable to be dismissed.

21. That the claimant in the absence of the staff took away register from the office and obtained the photo copies of the registered and she prepared a false and baseless forged documents and it trying and wrongly showing her attendance.

22. I say it is submitted before this Hon'ble court that Smt. Rani is not a workman and she is not covered under the definition of 2(s) of the Industrial Dispute Act and between the parties as employee are Master and Servant. The present dispute is not maintainable as per law.

RELIED JUDGEMENTS are attached herewith for kind perusal of this Hon'ble Court.

i) State of UP V/S Neeraj Awasthi (2006) I Supreme Court cased 667.

ii) (2006) I Supreme Court Cases 693 Madan Singh and Ors. V/s State of Haryana and others.

iii) AIR 1996 Supreme Court 2775 Dr. Surinder Singh Jamwal and another V/s State of Jammu and Kashmir and others.

iv) AIR 1996 Supreme Court 2776.

v) 1997(4) Supreme Court cases 507 B.N. Nagarajan and others V/s State of Karnataka and others.

vi) (2005) 5. Supreme Court Cases 122 Madhyamik Shiksha Parishad UP V/s Anil Kumar Mishara and other.

vii) (2005) Supreme Court Cases 124 Allahabad Jal Sansthan V/s Daya Shankar Rai and other.

viii) (2007) Supreme Court Cases 408 Indian drugs and Pharmaceuticals Ltd. V/s Workmen Indian Drugs Pharmaceuticals Ltd.

ix) (2006) Supreme Court cases 702 M.P. Housing Board and another V/s Manoj Shrivastava.

x) (2007) I Supreme Court cases 533 Gangadhar Pillai V/s Siements Ltd.

xi) State of UP V/S Neeraj Awasthi (2006).

xii) AIR 1996 SC (2275) Surinder Singh Jonwal and others V/s State of J&K

xiii) 1979(4) SCC pages 507 B.N. Nagranjan Case.

xiv) In Anil Kumar Mishra (2005) 5 SCC Page 122.

xv) Indian Drugs and Pharmecauticals Ltd 2007 (1) SCC Page 408.

xvi) In Manoj Srivastava 2006 (2) SCC 702

xvii) I Ganga Dhara Pillari 2007 (1) SCC 533 and others Supreme Court citations ten attached photo copies.

On the basis of contents mentioned in aforesaid management prayed that the claim petition of the claimant be dismissed with heavy costs. Any other relief which this Hon'ble Court deems fit and proper in favour of the management and against the claimant.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necssary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. In catena of Judgements, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated:-01/11/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

**का॰आ॰ 705.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल पब्लिक वर्क्स डिपार्टमेंट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 41/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/37/2008-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

**S.O. 705.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 41/2008) of the Central Government Industrial Tribunal/Labour Court-II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.P.W.D. and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42011/37/2008-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI**

**Present:—**Shri Harbansh Kumar Saxena

**ID No. 41/2008**

Sh. Naveen Kumar Sharma

***Versus***

C.P.W.D.

**AWARD**

The Central Government in the Ministry of Labour *vide* notification No. L-42011/37/2008-IR(DU) dated 18/07/2008 referred the following Industrial Dispute to this tribunal for the adjudication:—

> "Whether the demand of Sh. Naveen Kumar Sharma to allow him to join the duties under the management of CPWD is legal and justified? If yes, to what relief the applicant is entitled to?"

On 3/10/2008 reference was received in this tribunal. Which was register as I.D. No. 41/2008 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 29/10/2008. Wherein he stated as follows:—

1. That the appropriate Govt., Ministry of Labour, Government of India, New Delhi has referred the dispute *vide* its order No. L-42011/37/2008-IR(DU) dated 18-07-2008 for Industrial adjudication before this Hon'ble Tribunal and the terms of reference is reproduced as under:

"THE SCHEDULE TERMS OF REFERENCE"

> "Whether the demand of Sh. Naveen Kumar Sharma to allow him to join the duties under the management of CPWD is legal and justified? If yes, to what relief the applicant is entitled to?"

2. That the workman had joined as Khallasi w.e.f. 19-01-1990 in the Electrical Division C.P.W.D. "Manesar"

(Haryana) at the National Security Guard Project of the Management. He worked at Manesar from 19-01-1990. Copy of the first entry in the Deptt. is annexed as Annexure-A.

3. That thereafter, the workman had been transferred to the Office of Chief Office, C.P.W.D. at Curzon Road, New Delhi-110001 from 19-09-1994.

4. That the workman was promoted as driver *w.e.f.* 01-01-1995 and thereafter he was transferred to HUDCO sometime in 1995 *vide* dated 15-05-1995(copy of the order is annexed as Annexure A-1) and then transferred to outer Delhi zone in or about April, 1996. He worked as driver with S.E. Headquarter while his pay was drawn from Shahdara Office. He performed his duties till 15-06-1999 with S.E. Headquarter outer Delhi zone.

5. That the workman was implicated in a false criminal case and was detained on 16-09-1999 pending criminal prosecution. For this reason the workman could not attend to his duties for about eight months, this fact had been known to the Management of C.P.W.D. through the brother of the workman.

6. That there is a procedure under the establishments of the Management that the keys of Motor Vehicle remains in the possession of concerned driver and after entering the vehicle in the garage situation at Curzon Road Barracks where the office of the Chief Engineer concerned is situated. The keys of the Ambassador Car No. DBX66 was taken by the workman concerned as per the procedure. It is also submitted that after arrest of Sh. Naveen Kumar Sharma the keys of the aforesaid Ambassador vehicle was handed over to Sh. Dinesh Kumar, Superintending Engineer (P&A) and informed the said incident of the arrest of Sh. Naveen Kumar Sharma by the elder brother Shri Sunil Kumar of Workman on 16th June 1999 in the morning at about 7.00 P.M.

7. That the workman had been granted bail in the case Crime No. 151/99 dated 29/05/1999 u/s 302/307 I.P.C. of P.S. Khekhra, Distt. Bagpat (U.P.) and had been released on bail on 22-02-2000.

8. That immediately after his release on bail the workman reported for duty to his superiors especially to the Superintendent Engineer (P&A), Sewa Bhawan, R.K. Puram, New Delhi, since 23-02-2000 to 01-03-2000 but in vain. Later on he again submitted his application dated 01-03-2000 in writing to the Suptd. Engineer (P&A), R.K. Puram, New Delhi for joining duty. Copy of the intimation of bail order dated 01-03-2000 is annexed as Annexure-B collectively.

9. That the workman received a letter No. 10/01/595 dated 03-03-2000 from Shri C.M.K. Thakur, Section Officer (Bahari Delhi Anchal addressed to Executive Engineer, Shahdra Mandal & copy of the same sent to him for necessary action. Copy of the same is annexed as annexure-C.

10. That after the receipt of the aforesaid letter dated 1-3-2000 from Sh. C.M.K. Thakur, the workman has not received any further information, though he has been regularly reporting for duty. In spite of his repeated requests, he has not been allowed duty.

11. That though the workman had reported for duty from 23-02-2000 onwards, he has not yet been paid his salary *w.e.f.* 23-02-2000.

12. That the workman is a poor man having a family of six members and it is very difficult for him to meet out the bare necessities of himself, his family members and as such he & his family members have been facing starvation in these days of crises.

13. That the workman sent the last demand legal notice dated 13-04-2000 to the Management through his advocate demanding duty but the Management has failed to respondent. Copy of the said notice is annexed as Annexure-D.

14. That the workman has raised the dispute for employment allowing him to join his duty and also requested to pay his salary from the date of his arrest *w.e.f.* 23-02-2000 onwards when he released on bail on 22-02-2000 and 50% suspension allowance from the date his arrest *i.e.* 16-06-1999 to 21-02-2000 and thereafter *i.e.* the date of reporting after release on bail 23-02-2000 he is entitled full back wages as he was not allowed to join his duty.

15. That the Management neither terminated the services till date nor allow him to join his duty on the ground that till the said criminal proceedings are pending against the workman he cannot be taken on duty. The action of the management to refuse to take the workman on duty without any charge-sheet or notice as the workman completed more than 8 years of service at the time of his arrest/detained by the Police on 16-06-1999 without any break. So the action of the Management is also an unfair labour practice and also violation of natural justice as well as the provisions of Industrial Disputes Act 1947.

16. That the workman has also raised his dispute before the Conciliation Officer, Assistant Labour Commissioner (Central), New Delhi on 06-06-2000 against the illegal action of the Management.

17. That the workman remained absent from duty as he was detained by the Police on 16-06-1999 u/s 302/307 I.P.C. and also remained in judicial custody, so that absent cannot be termed as "willfully absented from duty". Due to the serious charges like murder were labeled against him and he could not inform the office in writing due to mental agony of arrest without any fault. So the workman is entitled lawfully to receive 50% wages during the period he remained on police/judicial custody *w.e.f.* 16/06/1999 to 21-02-2000 and released on bail on 22-02-2000, so he is entitled to full back wages thereafter as the workman

intimated the Management of his release but the Management did not allow him to join his duty.

18. That the workman initially engaged as Khalasi *w.e.f.* 19-01-1990 and worked upto 18-09-1994 on the same post without any break, thereafter he was transferred to the O/o Chief Engineer, Curzon Road, New Delhi *w.e.f.* 19-09-1994 and thereafter he was promoted as Motor Lorry Driver (MLD) *w.e.f.* 01-01-1995 and worked continuously without any single break as MLD upto the date of his arrest *w.e.f.* 16-06-1999. The workman completed 9 years services at the time of his arrest. Copy of promotion order as Motor Lorry Driver is annexed as Annexure-E collectively.

19. That the workman has got his wages during the period of his employment as unskilled labour and after promotion on the category of MLD he got the wages fixed for skilled workman in the minimum of time scale + all allowances. As per the judgment of Hon'ble Supreme Court in the matter of Surender Singh & Ors *Vs.* Engineers in chief & Ors. dated 17-01-1986 all the daily rated workers are entitled to get not only the equal pay for equal work but also entitled to be regularized after completion of six months. Accordingly, the workman has got equal pay for equal work but he is entitled to be regularized after completion of six months.

20. That the establishment of the Management is to maintain building, office building, roads etc. so the establishment is covered under the payment of wages act and accordingly also covered under the provisions of Industrial Employment (Standing Orders) Act, 1946 and Model Standing Orders in respect of Industrial Establishment not being Industrial Establishment not being Industrial Establishment in Coal Mines. Accordingly, the workman became permanent employees after completion of 90 days and also entitled 50% wages for the period when he remained on police/judicial custody being suspension period and after the acquittal by the Hon'ble Addl. Session Judge (Special) Bagpat, U.P. the workman is entitled for full back wages for the suspension period also.

21. That the workman also acquitted on 27-10-2005 by the Addl. Session Judge (Special) Bagpat (U.P.) in the matter of State *Vs.* Jagmohan and Ors. in case No. 129/99 *vide* his judgment dated 27-10-2005. Copy of the intimation of this fact was also intimated to the management of CPWD. The workman again requested for allowing duty alongwith the Judgment of Learned Addl. Session Judge (Special) Bagpat, U.P. are annexed collectively as Annexure-F.

22. That the management also ignored the Judgment of acquittal by Sh. P.K. Chaturvedi, Ld. Addl. Session Judge, Bagpat and did not respond the request of the workman as per annexure-F.

23. That the workman has been unemployed since the date of his arrest *i.e.* 16-06-1999 as he was acquitted and therefore entitled for full back wages *w.e.f.* 16-06-1999.

24. That the demand of workman Sh. Naveen Kumar Sharma to allow him to join the duty under the Management of CPWD is legal and justified.

On the Basis of which he prayed that this Hon'ble Court may kindly award:

a) Full back wages *w.e.f.* 16-06-1999 from the date when Sh. Naveen Kumar Sharma was detained, and after release on bail *w.e.f.* 22-02-2000 reported for duty on 23-02-2000 and finally acquitted from the charges on 27-10-2005.

b) Pass any other order or orders as may be deemed fit and proper.

**Against claim statement management filed following written statement:—**

**Preliminary Submissions/Objections:**

1.That the statement of the worker is not maintainable and liable to be dismissed with a ground of Suppression-vari and Suggessio-falsi. The worker has not approached this Hon'ble Court with clean hands.

2.That the statement of the worker is also not maintainable and liable to be dismissed as the same is devoid of any cause of action.

**PRELIMINARY SUBMISSIONS:**

I.The claimant was never on the regular strength of the Management at any point of time. It is to be noted that it is a normal practice in CPWD to engage locals as daily wage casual workers on different on-going projects on purely temporary basis and the claimant may have been engaged occasionally during the relevant period. However, there existed no record concerning the engagement of the claimant as daily-wager for the reason records concerning temporary engagement of daily wagers are not kept for long as payments are made on petty contingent vouchers of no permanent value to be kept on record for years together. Engaging the claimant on occasion casual daily-wage basis cannot vest in him any right to invoke the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The claimant does not qualify to be defined as Workman under the Act, since he was never on the regular strength of the CPWD/Management. Thus without appointment on regular strength question for promoting at the post of M.L. Driver does not arise, as Khalashi is a feeder category for promotion of M.L. Driver. (Copy of Recruitment Rules of Khalashi as well as MLD are attached as Annexure-R-1 & R-2 ). Therefore he has failed to furnish any proof or record such as Appointment letter/Promotion letter substantiating his claim in support of his averments made in the Statement of Claim.

II. That it is pertinent to mention here that the post of Motor Lorry Driver (in short M.L.D) is equivalent to

Group-C Post and there is already a ban on engagement of daily wages worker w.e.f. 19.11.1985 vide D.G(W) No. 38/11/84-EC-X dated 19/11/85 as well as a ban on engagement of casual worker for duties of Group-C posts, as per Govt. of India, Ministry of Finance, O.M No. 49014/16/89-Estt. (C) dated 26.02.1990 printed at page 240 of Establishment & Administration Book for Central Government Offices. Copies of both are annexed collectively as Annexure R3 & R4.

**PARAWISE REPLY**

1. That the contents of para-1 of the statement of claim need no reply being matter of record.

2. That the contents of para-2 of the Statement of claim are wrong, misleading and baseless hence vehemently denied. The workman be put to strict proof of the same. In reply to this Para it is respectfully submitted that the claimant was never been appointed as Khallashi and was never on the regular strength of the Management at any point of time. It is to be noted that it is a normal practice in CPWD to engage locals as daily wage casual workers on different on-going profects on purely temporary basis and the claimant may have been engaged occasionally during the relevant period. However, there existed no record concerning the engagement of the claimant as daily-wager for the reason records concerning temporary engagement of daily wagers are not kept for long as payments are made on petty contingent vouchers of no permanent value to be kept on record for years together. Engaging the claimant on occasion casual daily-wage basis cannot vest in him any right to invoke the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as he Act). The claimant does not qualify to be defined as Workman under the Act, since he was never on the regular strength of the CPWD/Management. Thus without appointment on regular strength question for promoting at the post of M.L. Driver does not arise, as Khalashi is a feeder category for promotion of M.L. Driver. (Copies of Recruitments Rules of Khalashi as well as MLD are attached as Annexure-R1&R2). Therefore he has failed to furnish any proof or record such as Appointment letter/Promotion letter substantiating his claim in support of his averments made in the Statement of Claim.

3. That the contents of para-3 of the Statement of Claim are wrong, misleading and baseless hence vehemently denied. The workman be put to strict proof of the same and in reply to this para it is respectfully submitted that whatever is stated in the preceding para of reply is reiterated.

4. That the contents of para-4 of the Statement of Claim are wrong, misleading and baseless hence vehemently denied. In reply to this para it is respectfully submitted that whatever is stated in the preceding paras of preliminary submissions as well as in para 2 are reiterated.

5. That the contents of para-5 of the Statement of Claim need no reply being matter of record.

6. That in reply to the averments of para-6 of the Statement of Claim nothing is admitted except what has been substantiated by records.

7. That the contents of para-7 of the Statement of Claim need no reply being matter of record.

8. That in reply to the averments of para-8 of the Statement of claim nothing is admitted except what has been substantiated by records. The Claimant does not qualify to the defined as a workman under the Act and therefore is not entitled to any of the relief being prayed for by him, since the claimant was never on the regular strength of the CPWD Management.

9. That the contents of para-9 of the Statement of Claim need no reply being matter of record.

10. That in reply to the contents of para-10 of the Statement of Claim it is respectfully submitted that as the workman was not on the regular strength of CPWD and he worked only as a casual Driver for an intermittent period and so he had no right for his re-engaging as Driver. Therefore in the department/Management for not re-engaging him, is in order and cannot be termed as unjustified and unlawful.

11. That the contents of para-11 of the Statement of Claim are wrong, misleading and baseless hence vehemently denied. The workman has not worked during the relevant period as stated in the para under reply, hence he is not entitle for an payment/salary. Therefore his claim for back wages is also not tenable and deserves its rejection.

12. That the contents of para-12 of the Statement of Claim need no reply, since the Management is not concerned with the matter.

13. That the contents of para-13 of the Statement of claim need no reply being matter of record.

14. That the contents of para-14 of the Statement of Claim are wrong, misleading and baseless hence vehemently denied. Since the workman was never on the regular strength of the Management, hence he is not entitle for any relief as sought in the para under reply. The relief for back wages/suspension allowance etc. is only applicable for the regular employees of the department and not for the casual employees.

15. That in reply to the contents of para-15 of the Statement of claim it is respectfully submitted that as the workman never appointed on any post by the department therefore he was not covered within the Service Rules framed for the regular employees and there was no need for issue charge sheet or any termination letter etc. being a casual worker.

16. That the contents of para-16 of the Statement of Claim need no reply being matter of record.

17. That in reply to the contents of para-17 of the Statement of claim it is respectfully submitted that whatever is stated in the preceding paras of reply is reiterated and the workman is not entitled for any of the relief as claimed.

18. That in reply to the contents of para-18 of the statement of claim it is respectfully submitted that what is stated in the para 2 & 4 of reply is reiterated.

19. That in reply to the contents of para-19 of the Statement of claim it is respectfully submitted that the workman was engaged as a casual worker w.e.f. 19.01.1990 in spite of a ban imposed on engagement of temporary workman. It is further submitted that being a casual worker he was entered in service without following prescribed recruitment rules. It may be treated a clear cut case of back door entry in the Govt. Service keeping in view of the Judgment delivered in the case of Secretary, State of Karnatka & Others *Versus* Uma Devi & Others (copy annexed). Therefore as per the judgment the workman has no right for his regularization.

20. That in reply to the contents of para-20 of the Statement of claim it is respectfully submitted that whatever is stated in the preceding paras of reply is reiterated and the workman is not entitled for any of the relief as claimed.

21 . That the contents of para-21 of the Statement of Claim need no reply being matter of record.

22. That in reply to the contents of para-22 of the Statement of Claim it is respectfully submitted that the judgment as passed by the court of Sessions Judge, Baghpat has no concern with regard to the question of job of the workman. Hence it is denied that the management has ignored the judgment.

23. That in reply to the contents of para-23 of the Statement of Claim it is respectfully submitted that whatever is stated in the preceding paras of reply is reiterated and the workman is not entitled for any of the relief as claimed.

24. That the contents of para-24 of the Statement of Claim are wrong and baseless hence vehemently denied and whatever is stated in para-10 of the reply is reiterated.

25. That the para under reply are the prayers made before this Hon'ble court and is liable to be dismissed with costs.

**On 19/1/2010 My Ld. Predecessor framed following issues:—**

1. As per Reference if any.

2. Relief.

**In support of his case workman filed affidavit in this Tribunal wherein he mentioned as follows:—**

1. That I joined as Khallasi w.e.f. 19.01.1990 in the Electrical Division C.P.W.D "Manesar" (Haryana) at the National Security Guard Project of the Management. I worked at Manesar from 19-01-1990 to 18-09-1994. Copy of the first entry in the Deptt. is annexed as Annexure-A with the statement of claim and the same is exhibit WW1/1.

2. That I transferred to the Office of Chief, C.P.W.D. at Curzon Road, New Delhi-110001 on 19-09-1994.

3. That I was promoted as driver w.e.f. 01-01-1995 and thereafter I was transferred to HUDCO sometime in 1995 *vide* order dated 15-05-1995 (Copy of the order is annexed as Annexure A-I) with the statement of claim & the same is exhibit WW1/2. I again transferred to outer Delhi zone in April, 1996. I worked as driver with S.E. Headquarter while I draw my pay from Shahdara Office. I worked in S.E. Headquarter outer Delhi zone 15-06- 1999.

4. That I was implicated in a false criminal case and detained on 16-06-1999 pending criminal prosecution. Due to this reason I could not attend duty for about eight months, this fact had been known to the management of CPWD through my elder brother Sh. Sushil Kumar.

5. That there is a procedure under the establishment of the Management that the keys of Motor Vehicle remains in the possession of concerned driver and after entering the vehicle in the garage situation at Curzon Road Barracks where the office of the Chief Engineer concerned is situated. I took the keys of Ambassador Car No. DBX66 as per the procedure. It is also submitted that after arrest the keys of the aforesaid Ambassador vehicle was handed over to Sh. Dinesh Kumar, Superintending Engineer (P&A) and informed about said incident by my elder brother Sh. Sunil Kumar on 16th June, 1999 in the morning at about 7.00 P.M.

6. That I was granted bail in the case Crime No. 151/99 dated 29-05-1999 u/s 302/307 I.P.C. of P.S. Khekhra, Distt. Bagpat (U.P.) and had been released on bail on 22-02-2000.

7. That immediately after release on bail I reported for duty to my superiors especially to the Superintendent Engineer (P&A), Sewa Bhawan, R.K. Puram, New Delhi. When the Management did not took me on duty I again requested *vide* application dated 01-03-2000 addressed to

the Suptd. Engineer (P&A), R.K. Puram, New Delhi for joining duty. Copy of the intimation of bail order dated 01-03-2000 is annexed as Annexure-B collectively with the statement of claim and the same is Exhibit WW 1/3 collectively.

8. That Sh. C.M.K. Thakur, Section Officer (Bahari Delhi Anchal) sent a letter No. 10/1/595 dated 03-03-2000 addressed to Executive Engineer, Shahdra Mandal to enquire the matter for necessary action. Copy of the same is annexed as annexure-C with the statement of claim and the same is Exhibit WW 1/4.

9. That though I reported for duty on 23.02.2000 onwards but I had not yet been paid my salary *w.e.f.* 23.02.2000

10.That I sent legal notice for duty on 23.02.2000 to the Management through my advocate demanding duty but the Management did not respond. Copy of the said notice is annexed as Annexure-D with the statement of claim and the same is Exhibit WW1/5.

11 .That I raised the dispute for employment/allowing me to join duty and also requested to pay my salary from the date of arrest *w.e.f.* 23.02.2000 onwards when I released on bail on 22.02.2000 and 50% suspension allowance from the date of my arrest *i.e.* 16.06.1999 to 21.02.2000 and thereafter *i.e.* the date of reporting after release on bail 23.02.2000 I am entitled full back wages because I remained unemployed till date.

12.That the Management neither terminated my services till date nor allowed me to join duty on the ground that till the said criminal proceedings are pending against me I cannot be taken on duty without any charge-sheet or notice and no enquiry was conducted. I completed more than 8 years of service at the time of arrest/detained by the Police on 16.06.1999 without any break and completed 240 days in each of the calendar year.

13 .That I raised my dispute before the Conciliation Officer, Assistant Labour Commissioner (Central), New Delhi on 06.06.2000 against the illegal action of the Management.

14.That I remained absent from duty as I was detained by the Police on 16.06.1999 u/s 302/307 I.P.C. and also remained in judicial custody, so the absent cannot be termed as "willfully absented from duty". Due to the serious charges like murder were labeled against me and I could not inform the office in writing due to mental agony of arrest without any fault. So I am entitled lawfully to receive 50% wages during the period I remained on police/judicial custody *w.e.f.* 16.06.1999 to 21.02.2000 and released on bail on 22.02.2000 so I am entitled to full back wages thereafter as I intimated the Management of my release but the Management did not allow me to join duty.

15.That I was initially engaged as khalasi *w.e.f.* 19.01.1990 and worked upto 18.09.1994 on the same post without any break, thereafter I was transferred to the O/o Chief Engineeer, Curzon Road, New Delhi *w.e.f.* 19.09.1994 and thereafter he was promoted as Motor Lorry Driver (MLD) upto the date of my arrest *w.e.f.* 16.06.1999. I completed 9 years service at the time of arrest. Copy of promotion order as Motor Lorry Driver is annexed as Annexure-E collectively with the statement of claim and the same is Exhibit WW1/6.

16.That I got wages during the period of employment as unskilled labour and after promotion on the category of MLD I got the wages fixed for skilled workman in the minimum of time scale + all allowances except increment.

17.That I acquitted on 27.10.2005 by the Ld. Addl. Session Judge (Special) Bagpat (U.P) in the matter of State Vs. Jagmohan and Ors. in case No. 129/99 *vide* judgment dated 27.10.2005. Copy of the Judgment alongwith intimation letter are annexed collectively as Annexure-F with the statement of claim and the same in Exhibit WW1/7.

18.That the Management also ignored the Judgment of acquittal by Sh. P.K. Chaturvedi, Ld. Addl. Session Judge, Bagpat and did not respond to my request.

19.That I remained unemployed since the date of arrest *i.e.* 16.06.1999 to till date.

Workman Naveen Kumar WW1 was cross-examined by Mr. Sanjay Aggarwal A/R for the management on 25/10/2011.

Management in support of his case filed affidavit Mr. D.B. Gupta Executive Engineer wherein he mentioned as follows:—

1. That I say that I am working as Executive Engineer with the management *i.e.* CPWD and well conversant with the facts of the present case on the basis of record available in the office hence competent to swear this affidavit.

2. I say that the claimant was never on the regular strength of the Management at any point of time. It is to be noted that it is a normal practice in CPWD to engage locals as daily wage casual workers on different ongoing projects on purely temporary basis and the claimant may have been engaged occasionally during the relevant period. However, there existed no record concerning the engagement of the claimant as daily-wager for the reason records concerning temporary engagement of daily wagers are not kept for long as payments are made on petty contingent vouchers of no permanent value to be kept on record for years together. Engaging the claimant on occasion casual daily-wage basis cannot vest in him any right to invoke the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The claimant does not qualify to be deemed as Workman under the Act, since he was never on the regular strength of the CPWD/Management. Thus without appointment on regular strength question for

promoting at the post of M.L. Driver does not arise, as Khallashi is feeder category for promotion of M.L. Driver. Copy of Recruitment Rules of Khallashi and M.L. Driver are EX-MW1/1 and EX-MW1/2 respectively.

3. I say that the post of Motor Lorry Driver (in short M.L.D) is equivalent to Group-C post and there is already a ban on engagement of daily wages worker *w.e.f* 19.11.1985 *vide* D.G. (W) No. 38/11/84-EC-X dated 19/11/85 as well as a ban on engagement of casual worker for duties of Group-C posts, as per Govt. of India Ministry of Finance, O.M. No. 49014/16/89-Estt (C) dated 26.01.1990 printed at page 240 of Establishment & Administration Book for Central Government Offices. Copy of DG(W) No. 38/11/84-EC-X dated 19/11/85 and O.M. No. 49014/16/89-Estt (C) dated 26.01.1990 printed at Page 240 of Establishment & Administration Book for Central Government Offices are Ex-MW1/3 and Ex-MW1/4 respectively.

4. I say that the Hon'ble Principal Bench of Central Administrative Tribunal also dismissed the claim of Shri Vidya Sagar Prasad in the light of law laid down by the Hon'ble Supreme Court in the Uma Devi's case *vide* O.A No. 3320/2010 *vide* order dated 14/11/2011 (Copy of said order is attached herewith).

5. I say that the case filed by the workman on false & frivolous facts hence liable to be dismissed.

He was cross examined by Sh. B.K Prasad A/R for the workman. Management also closed his evidence after evidence of parties I have heard the argument A/R for the parties. Ld. A/R's for the workman argued that workman Naveen Kumar Sharma appointed Khallashi and promoted to Driver he detained in false case of murder on 16/06/1999. Whether of workman inform to management regarding his detention. Workman bail out on 12/02/2000. On 1/03/2000 he requested for duty copy of application dated 1/03/2000 has been filed by workman. On which enquiry was marked and report was called upon. No pay to workman paid, no departmental enquiry conducted acquitted from the charge of murder. Certified copy of Judgment filed by workman.

There is non-complines of Section 25F, 25G & 25H of Industrial Dispute Act.

On the basis of aforesaid grounds workman prayed to allow him to join the duty under the management of CPWD.

In support of his case he placed reliance on following rulings:—

1. Devender Singh *v.* Municipal Council, Sanaur. AIR 2011 Supreme Court 2532

2. Express Newspapers (P) Ltd.

*Vs.*

Michael Mark and Another
Supreme Court Reports (1963) 3 SCR -405

3. Madhabanada Jena

AND

Orissa State Electricity Board and Others in the High Court of Orissa (1990-I-LLJ-463) (0.J.C. No. 750/1983, dated 22nd August, 1989)

3. Babu Lal, Applent

*Vs.*

The State of Haryana
Air 1991 Supreme Court 1310

4. Brahma Chandra Gupta

*Vs.*

Union of India
(1984) 2 Supreme Court Cases 433

Is reply to argument of workman management filed written argument wherein it mentions as follows:—

Claimant Sh. Naveen Kumar Sharma was never on the regular strength of the management at any point of time. It is a normal practice in CPWD to engage locals as daily wages casual workers on different on-going projects on purely temporary basis and the claimant may have been engaged occasionally during the relevant period. However, there existed no record concerning the engagement of the daily wagers are not kept for long as payments are made on petty contingent vouchers of no permanent value to be kept on record for years together. Engaging the claimant on occasion caused daily-wages basis cannot vest in him right to invoke the provisions of the Industrial Dispute Act, 1947. The claimant does not qualify to be defined as workman under the Act, since he was never on the regular strength of the CPWD/Management. Thus without appointment on regular strength there is no question for promoting at the post of M.L. Driver. Copy of Recruitment Rules of Khalashi and M.L. Driver are placed on record and exhibited during the evidence of the management as EX-MW1/1 and EX-MW 1/2.

The post of Motor Lorry Driver (in short M.L.D.) is equivalent to Group-C post and there is already a ban on engagement of daily wages worker *w.e.f.* 13/11/1985 vide D.G. 9W no. 38/11/84-EC-X dated 19/11/1985 as well as a ban on engagement of causal worker for duties of Group-C posts, as per Govt. of India, Ministry of Finance, O.M. No. 49014/16/89 Estt.(C) dated 26.02.1990 printed at page 240 of Establishment & Administration Book for Central Government Officers. Copy of D.G 9W No.38/11/84 EC-X dated 19/11/85 and O.M. No. 49014 /16/1990 printed at page 240 of Establishment & Administration Book for Central Government Offices are placed on record and exhibit during the evidence of the management as EX-MW1/3 and MW1/4 respectively.

It is submitted that claim of claimant Naveen Kumar Sharma, that he joined as Khallasi with the management is

without any base and he failed to show any appointment letter in his favour or salary receipt issued by the management in his favour. So demand of Sh. Naveen Kumar Sharma to allow him to join the duties under the management of CPWD is illegal, unjustified and without any basis. So he is not entitled for any relief as prayed for.

In the light of contentions and counter contentions I perused the pleadings, Issues and evidence of parties.

Perusal of pleadings and evidence on record shows that daily wager workman Naveen Kumar Sharma was not permitted to join by management on the ground of his continuous absence. Although stand of workman is that he could not come due to his confinement in jail in false case of murder. His absence was beyond his control. That case ended in acquittal. He should be permitted to join duty and direction to management in this respect be given.

Stand of management is that departmental enquiry is pending against workman. Which was pending for decision due to pendency of murder Trial. Now murder trial has been decided hence departmental enquiry will proceed.

It is relevant to mention here that a judgment of a Criminal Court acquitting an accused on the merits of a case, would not bar disciplinary proceedings against him on the basis of the same facts. Nor such a judgment could operate as conclusive evidence in the disciplinary proceedings, because a Criminal Court requires high standard of proof for convicting an accused. However, the case must be proved beyond reasonable doubt. The acquittal of an accused by a Criminal Court only means that the case has not been proved against him beyond reasonable doubt such a standard of proof is not required for finding a person guilty in a disciplinary proceeding. It would be enough it there is preponderance of probability of his guilt. It is also relevant to mention here that management has not concluded enquiry since acquittal of workman accused on 27.10.2005. Although boundan duty of management was to conclude enquiry of alleged misconduct as soon as possible. So delay defeats the justice. Due to aforesaid in ordinate delay in concluding enquiry adverse inference is drawn against management and it is presumed that there is no evidence against workman to held him guilty in departmental enquiry for alleged misconduct.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr. *Vs.* Gitam Singh, (2013)11 LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000 (Rs. Fifty thousand only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr. AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management. Award is accordingly passed.

Dated : 08/11/2013

HARBANS KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 706.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव, नुक्लेयर फ्यूल काम्पलेक्स, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 24/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं. एल-42011/97/2010-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th Feburary, 2014

**S.O. 706.**—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 24/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief Executive, Nuclear Fuel Complex, Hyderabad and their workmen, which was received by the Central Government on 28/01/2014.

[No. L-42011/97/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**PRESENT :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 27th day of May, 2013

**INDUSTRIAL DISPUTE No. 24/2011**

**BETWEEN:**

The General Secretary,
NFC Employees' Trade Union Congress (INTUC),
P.O: ECIL, Hyderabad. ....Petitioner

AND

The Chief Executive,
Nuclear Fuel Complex,
ECIL post,
Hyderabad. ....Respondent

**APPEARANCES:**

For the Petitioner : None

For the Respondent : None

**AWARD**

The Government of India, Ministry of Labour by its Order No. L-42011/97/2010-IR(DU) dated 24.5.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Nuclear Fuel Complex and their workmen. The reference is:

**SCHEDULE**

"Whether the action of the management of Nuclear Fuel Complex, Hyderabad against the office bearers of the NFC Trade Union Congress, as alleged by the Union, amounts to unfair labour practice? If yes, what relief union is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 24/2011 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. In spite of giving fair opportunity, claim statement was not filed by the Petitioner union and the matter is coming up since the year 2011. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gown, Personal Assistant transcribed by her and corrected by me on this the 27th day of May, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| NIL | NIL |

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 707.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव, नुक्लेअर फ्यूल काम्पलेक्स, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 23/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/96/2010-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 707.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 23/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief Executive, Nuclear Fuel Complex, Hyderabad and their workmen, which was received by the Central Government on 28/01/2014.

[No. L-42011/96/2010 -IR(DU)]

P. K. VENUGOPAL , Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**PRESENT :** Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 27th day of May, 2013

**INDUSTRIAL DISPUTE No. 23/2011**

**BETWEEN:**

The General Secretary,

NFC Employees' Trade Union Congress (INTUC),

P.O: ECIL, Hyderabad. ....Petitioner

AND

The Chief Executive,

Nuclear Fuel Complex, Hyderabad ....Respondent

**APPEARANCES:**

For the Petitioner : M/s. G. Ravi Mohan, Vikas Sharma & K. Bhaskar, Advocates

For the Respondent : None

**AWARD**

The Government of India, Ministry of Labour by its order No. L-42011/96/2010-IR(DU) dated 25.5.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Nuclear Fuel Complex and their workmen. The reference is:

**SCHEDULE**

"Whether the action of the management of Nuclear Fuel Complex, Hyderabad by implementing the PRIS(G), overriding the provisions of payment of Bonus Act, 1965 resulting in non-payment of any financial benefit to 125 workmen is legal and justified? What relief workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 23/2011 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. Inspite of giving fair opportunity, claim statement was not filed by the Petitioner union and the matter is coming up since the year 2011. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gown, Personal Assistant transcribed by her and corrected by me on this the 27th day of May, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| NIL | NIL |

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 708.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 56/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/19/2006/आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 708.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 56/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and their workman, which was received by the Central Government on 28/01/2014.

[No. L-40012/19/2006-IR(DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**PRESENT** : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 6th day of May, 2013

**INDUSTRIAL DISPUTE No. 56/2006**

**BETWEEN:**

Smt. Ch. Sharriffa,
D.No. 76-17-430,
Urmila Subba Rao Nagar,
Bhavanipuram (P.O.),
Vijayawada. .....Petitioner

**AND**

1. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Office of the CGM, Telecom,
A.P. Circle, Hyderabad-1.

2. The Divisional Engineer (A/T),
Switching/QOS, Bharat Sanchar Nigam Ltd.,
A.P. Circle, 6-1-67/20A, Lakdikapul,
Saifabad, Hyderabad. .....Respondents

**APPEARANCES:**

For the Petitioner : Sri William Burra, Advocate
For the Respondent : M/s. M.C. Jacob & K. Ajay Kumar, Advocates

**AWARD**

The Government of India, Ministry of Labour by its order No. L-40012/19/2006-IR(DU) dated 9.10.2006 referred the following dispute under section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workwoman. The reference is:

**SCHEDULE**

"Whether the action of the management of Divisional Engineer (A/T), Bharat Sanchar Nigam Ltd., Hyderabad in terminating the services of Smt. Ch. Shariffa, *w.e.f.* July, 1997 is just and legal? If not, to what relief the workwoman is entitled to and from which date?"

The reference is numbered in this Tribunal as I.D. No. 56/2006 and notices were issued to the parties concerned.

2. Petitioner work woman has filed her claim statement and documents. Petitioner has fileld this petition praying to set aside the oral termination of her services from 1.7.1997 by declaring the said termination as ab-initio void and consequently declare the Petitioner with continuous employment with full back wages and all attendant benefits.

3. Respondent filed counter statement stating that the Petitioner was given specific understanding that the engagement is for the transmission project and her employment would cease with the closure and winding up of the project establishment. Accepting those terms and conditions, Petitioners reported to duty and accordingly, her services were disengaged with the closure of the project establishment. The conversion of part time casual labourer is subject to avialability of vacancies of Group D posts and does not automatically confer any entitlement of any person for full time conversion and subsequent regularization without there being any necessity. Hence, the petition be dismissed.

4. Petitioner work woman filed her chief examination affidavit.

5. The case stands posted for cross examination of Petitioner work woman. WW1 who is the Petitioner called absent. Inspite of giving fair opportunity she is not turning up. Learned Counsel for the Petitioner reported that inspite of his efforts he could not contact her. As she has not supplied her telephone number and also the letters addressed to her to the known address returned unserved. In the given circumstances, taking that Petitioner work woman has got no interest in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dicated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 6th day of May, 2013

M. VIJAYA LAKSHMI, Presiding Officer.

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| NIL | NIL |

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 709.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 67/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014/आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 709.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 67/2008) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of the The Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42025/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**PRESENT :** Smt. M. Vijaya Lakshmi,
Presiding Officer

Dated the 6th day of January, 2014

**INDUSTRIAL DISPUTE L.C. No. 67/2008**

**BETWEEN:**

Sri J.T. Appalaraju,
S/o J. Veeraraju,
R/o Ramdas Peta, Sidhartha Nagar,
Near Saiganagdhra Mitta, Rajahmundry.
C/o R. Yogender Singh, Advocate,
1-10-100, Temple Alwal,
Secunderabad. .....Petitioner

**AND**

1. The Chief General Manager,
Telecom, (B.S.N.L.)
Hyderabad.

2. The Sub- Divisional Officer,
Telecom (B.S.N.L.)
Rajahmundry. ....Respondents

**APPEARANCES :**

For the Petitioner : Sri R. Yogender Singh, Advocate

For the Respondent : Sri Karoor Mohan, Advocate

**AWARD**

This is a petition filed by Sri J.T. Appalaraju, the workman seeking for setting aside the oral termination order dated 19.3.2002 consequently directing the respondents to regularize his service immediately after completion of 355 days of his service, with continuity of service and all other consequential benefits.

2. The averments made in the petition in brief are as follows:

Petitioner was engaged by the 2nd respondent as casual mazdoor with effect from 1.5.1986. He was engaged by the respondent till 12.8.1999 and from 19.3.2002 his services were terminated *vide* oral order. He was engaged for a period of 355 days in a year for the period commencing from 1.5.1986 to April, 1987 which excludes the national holidays and weekly offs. If those days are included the total days comes to more than 403 days in a year. Petitioner was thus engaged by the respondents for 13 years as casual mazdoor on muster rolls. Subsequently he was converted into a contract labour. He is entitled for regularization as per the seniority of casual mazdoor list instead his services were terminated with effect from 19.3.2002 even as a contract labour without assigning any reason and without following the process contemplated under Sec. 25F of Industrial Disputes Act, 1947. More over, the persons who are far juniors to him are regularized by the respondents. Petitioner filed OA No. 986/1994 and 96/1998 before the Hon'ble Central Administrative Tribunal, wherein respondents were directed to engage the Petitioner whenever work is available *vide* orders dated 20.11.95 in OA 986/1994 and OA No. 96/1998 was dismissed. But on the pretext of existence of ban he was not reengaged. He was engaged on different spells with intentional breaks to deprive him of regularization. He filed WP No. 8192 of 2006 which was dismissed, but with observations that:

> "The issues raised in this writ petition namely whether the petition earlier worked as casually labour in the Respondent organization and if so, whether he is eligible for re-engagement as casual labour or not. And whether some of the juniors and freshers are engaged as casually labour. But denying the case of the Petitioner are all disputed questions of fact, which can be decided only after adducing evidence by the parties and this court in exercise of jurisdiction U/A. 226 of the constitution of India, can not decide the same based on the averments made in the Writ Affidavit.
>
> The writ petition is devoid of merit and the same accordingly dismissed. however the Petitioner is at liberty to approach the appropriate forum provided under law."

In the said writ petition respondents admitted that they are engaging contractors for the work which previously done by engaging casual labour it is against law as laid down in the case of Management of Silver Sand Resorts *Vs.* The Workman Silver Sand Employees Union 1996 (2) LLJ 1050 (Madras) Division Bench. Thus, it's clear that respondents totally violated the provisions of Industrial Disputes Act, 1947 in terminating the services of the Petitioner. Hence, this petition.

3. Respondents filed their counter with averments in brief as follows:

Petitioner can not claim any right of regularization as it is in violation of rules as held in the case of Umadevi. OA 97/1998 filed by the Petitioner was dismissed by Hon'ble Central Administrative Tribunal, Hyderabad holding that Petitioner is not entitled for any relief. As per CGMT, HD

letter dated 7.8.1991, seniority is to be fixed as per number of days worked by the mazdoor in the Department but not from the date of his initial recruitment as casual mazdoor. Petitioner has rendered service of more than 240 days in two years only. Particulars of the days he worked in the Department since his engagement are furnished below:—

| Year | 86-87 | 87-88 | 88-89 | 89-90 | 90-91 | 91-92 | 92-93 | 93-94 | 94-95 | 95-96 | 96-97 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| No. of days | 328 | 30 | 37 | 160 | 146 | 293 | -- | 58 | 31 | -- | 29 |

As per the Departmental rules, the casual mazdoors who have rendered 240 days of service in a year having less than one year break in service are eligible for the grant of temporary status. But the Petitioner has rendered 240 days in two years only. He has break in service for more than one year for two spells, *i.e*., 1.5.1987 to 14.2.1989 and 1.11.1996 to 21.1.1998. Thus, he is not eligible for grant of temporary status. As there was no work he could not be reengaged in the Department. No freshers and no juniors to the Petitioner is engaged in the SSA. The directions of Hon'ble Central Administrative Tribunal, Hyderabad are being implemented strictly. As per the DOT/ND letter dated 25.6.1993 mazdoors who are engaged for laying coaxial cable in project circles and dismantling/erection of lines in Railway electrification circuits can be granted temporary status if they are recruited on or before 22.6.1988. The TSMs, mentioned by the Petitioner were recruited I CCP/ Rly.Ele.Project before 22.6.1988. As per DOT/ND letter dated 12.2.1999 the powers of all DOT officers to engage casual mazdoors either daily or monthly wages direct or through contractors are withdrawn. Hence no casual mazdoor can be engaged for the work mentioned by the Petitioner. Thus, there, are no merits in the case of the Petitioner.The orders passed by the respondent is legal as per the constitutional provisions. The Petitioner can not be reinstated into service as per rules, petition is liable to be dismissed with costs.

4. To substantiate the contentions of the Petitioner he examined himself as WW1 and Ex. W1 to W6 were marked. On behalf of the respondent MW1 was examined and no documentary evidence was adduced.

5. Heard either party. Written arguments for Petitioner were filed and the same are received and considered.

6. The points for determination are:

1. Whether the impugned oral termination order is liable to be set aside. If so on what grounds?

2. To what relief Petitioner is entitled to?

**7. Point No (1) :**

The Petitioner who claimed in his petition that his services were terminated with effect from 19.3.2002, has claimed while deposing as WW1 that it was stated so, due to a typographical mistake and that his services were terminated on 12.8.1999 by an oral order and without following due process of law. Regarding this aspect WW1 is not cross examined. Thus, it is not a disputed fact. Thus, it is the claim of the Petitioner that his services have been terminated by the respondents with effect from 12.8.1999.

8. As can be gathered from the material on record, it is the claim of the respondents that the contention of the Petitioner that his services were orally terminated by the respondent is not at all correct. MW1, the only witness who was examined for the Management, also claimed that there was no oral termination of services of the Petitioner. But the fact remains that Petitioner could not attend to the work of the respondent Management subsequent to 12.8.1999. Ex. W1 is the copy of the muster roll book pertaining to the Petitioner which indicates that he could work for the respondent upto 12.8.1999 only. The reason for the same is being claimed by the Petitioner as termination of his services on the part of the respondent, whereas respondent has not chosen to assign any reason at all for the same. Further, the material on record is disclosing that Petitioner was constrained to approach the Central Administrative Tribunal and the High Court of Andhra Pradesh, questioning the correctness of disengagement of his service on the part of the respondent since 12.8.1999, which means, that he has been complaining all along that his services were orally terminated by the respondent since 12.8.1999. Thus, it is to be taken that his services were so terminated.

9. Whether such termination of services is legal and valid is a question now to be considered.

10. Petitioner as WW1 has categorically claimed that while terminating services of any workman respondent has to follow the elaborate procedure as laid down in Ex.W5 the letter of dept of telecommunication dated 17.6.1983. In clause No. V of the said letter elaborate procedure has been laid down for retrenchment of the workers. This procedure is in adherence to the provisions of the Industrial Disputes Act, 1947. The Junior most casual mazdoor is to be terminated, but not the seniors. Seniority list is to be pasted on the notice board, in a conspicuous place in the premises of the industrial establishment. One month's notice is to be given or in lieu of the said notice one month's wages have to be paid to the workman. The notice shall contain reasons for retrenchment and it shall be notified to the Ministry of Labour. There are some other such conditions which are also to be complied with as per this letter. Evidently, the said procedure has not been followed and the conditions mentioned there in were not complied while the Petitioner was disengaged/removed from service. Respondent is not denying the liability to follow all these conditions while disengaging a casual mazdoor. It is an admitted fact that Petitioner has been working as casual mazdoor for the respondent.

11. In view of the foregone discussion, the termination of services of the Petitioner is certainly neither legal nor valid and therefore, it is liable to be set aside.

This point is answered accordingly.

12. **Point No. II:**

Consequent to the finding in Point No.I above, Petitioner is to be reinstated into service. Further, as can be gathered from the evidence of MW1 Petitioner has worked for 293 days in the year 1991-92. MW1 stated that the scheme of grant of temporary status and regularization has been introduced with effect from 1.10.1989 as per DOT/ND letter No.269-10-89 TN dated 7.11.89 and that as per this all casual mazdoor who are currently employed and have rendered minimum of 240 days in a year are eligible for grant of temporary status. But, he claimed that after introduction of this scheme, Petitioner has not rendered minimum of 240 days in a year. This is a wrong statement. This can be said so since even as per the averments in the counter of Respondent/Management Petitioner has worked for 293 days in the year 1991-92. Thus, long ago services of the Petitioner ought to have been regularized and he ought to have been granted temporary status. As can be seen from the particulars of the work of the Petitioner given in the counter filed by the management there was no break period of more than one year prior to the year 1991-92 or subsequently. But he denied his right of regularization and grant of temporary status. For the same, no reasons are assigned. It is the categorical claim of the Petitioner that his juniors like, one Chitti Babu and others who have put in less working days than that of him, have been granted temporary status and were regularized in service. He further claimed that in case of said Chitti Babu the break period of more than one year was also condoned. Even though Petitioner as WW1 has categorically made all these claims, Respondent has not chosen to contradict the same in any manner by producing relevant records. The respondent/ Management being custodian of all the service records of their employees they will be in a position to disprove the contentions of the Petitioner by producing relevant records. Failure on their part to do so certainly give rise to an adverse inference that they failed to produce records because, the said records, if produced, would render support to the contentions of the Petitioner, only.

13. As can be gathered from the contentions put forth for the respondent, it is their claim that by virtue of an order passed by the Central Administrative Tribunal, Hyderabad Petitioner is not entitled for any of the reliefs sought for. But, no such order is placed before this Tribunal by the respondent. On the other hand they are blaming the Petitioner for not placing such order before the Tribunal. Respondent who is taking shelter under the said order, is the person who is to produce the said order before this Tribunal to invite attention of the Tribunal to the said order. But they have not done so. Therefore, their contentions with this regard, can not be accepted. Moreover, the Central Administrative Tribunal got no jurisdiction to try the industrial disputes. Therefore, any order passed by the said forum touching the industrial dispute will be an order passed without jurisdiction.

14. It is the other contention of the respondent that as per the verdict of Hon'ble the Apex Court in the case of Umadevi, the popular verdict on service law, Petitioner's services can not be regularized. This contention is also is not an acceptable contention for the reason that in the case of Umadevi, the civil service and civil appointments were considered but not any industrial disputes. Industrial law is totally different from civil law. The industrial appointments and regularization of the services of workmen under the industrial laws, rules and regulations is totally different from that in the civil law/administrative law. It's already distinguished and it is held that the principles laid down in the case of Umadevi are not applicable in the industrial disputes.

15. As can be gathered from the material on record, the Petitioner, who is a casual mazdoor working for the respondent has been arbitrarily dealt with by the respondent. He has been entrusted with work for some days and has not been entrusted with the same for some days, discriminating him and with a view to deny regularization to him, as per the contentions of the Petitioner. For this there is no specific and acceptable answer from the respondent. Further more, as already discussed above, though eligibility and right have been accrued to the Petitioner as early as in the year 1991-92 for grant of temporary status and for regularization of his services, the same was denied to him. Thus, he is entitled for regularization of services. He is entitled for consequential reliefs also. But, considering the magnitude of financial implications if back wages are ordered, which may adversely affect the Respondent organization, same is to be denied to the Petitioner.

16. By way of summing up the reliefs to be given, the following is being stated:

Consequent to the finding given in point No.I respondent is to be directed to reengage the Petitioner into service as casual mazdoor and further to regularize his services considering his service of 293 days in the year 1991-92 and giving effect to the said service. His seniority is to be fixed with retrospective effect. But as to the payment of wages are concerned the same shall be for the days during which he put in the work only but not any back wages. Consequent to the grant of temporary status and regularization of service mentioned supra, Petitioner shall be entitled for all consequential service benefits, like promotions and increments.

This point is answered accordingly.

17. **Result:**

In the result, petition is allowed. The impugned order oral termination order dated 12.8.1999 is hereby set aside. Petitioner shall be reinstated into service as casual mazdoor forthwith. Further he shall be granted temporary status and his services shall be regularized with retrospective effect considering 293 days of work he put in, in the year 1991-92. His seniority also shall be fixed with retrospective effect consequent to his regularization. He is entitled for all other service benefits like grant of increments and promotions consequent to regularization also with retrospective effect except for any financial benefit. The financial benefit shall be extended to him as per the post in which he is to be regularised at present and since he starts to work in that capacity, only. He is not entitled for any back wages.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 6th day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| WW1: Sri J.T. Appala Raju | MW1: Sri A. Veera Bhadra Rao |

**Documents marked for the Petitioner**

| | |
|---|---|
| Ex. W1 | Photostat Copy of muster roll |
| Ex. W2 | Photostat Copy of orders passed in WP No.8192/2006 |
| Ex. W3 | Photostat Copy of list of juniors of 91 candidates |
| Ex. W4 | Photostat Copy of particulars of junior employee of WW1 *i.e.*, K. Chitti Babu |
| Ex. W5 | Photostat Copy of departmental order of M/o Telecommunication |
| Ex. W6 | Photostat Copy of seniority list of casual mazdoors dt.31.12.1996 |

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 710.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **हैदराबाद** के पंचाट (संदर्भ संख्या 68/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 710.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 68/2008) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**Present :** Smt. M. Vijaya Lakshmi,
Presiding Officer

Dated the 13th day of January, 2014

**INDUSTRIAL DISPUTE L.C. No. 68/2008**

**Between :**

Sri A. Jayaramulu,
S/o A. Ramaiah,
R/o Sudduguaripalli,
Prabalveedu (P.O.)
Badwel(T), Kadapa District. ....Petitioner

AND

1. The General Manager,
Telecom District,
Kadapa — 516001.

2. The Sub-Divisional Officer,
Telecom, Rajampet, ....Respondents
Kadapa.

**Appearances:**

For the Petitioner : Sri R. Yogender Singh, Advocate

For the Respondent : Sri Karoor Mohan, Advocate

**AWARD**

This is a petition filed by Sri A. Jayaramulu, the workman seeking for setting aside the oral termination order dated 1.2.2007, consequently directing the respondents to regularize his services if not from the date of completion of

240 days, i.e., from May, 1982, or atleast from the date of regularization of his juniors *i.e.,* Subbaiah and Pratap Reddy and pass orders as deem fit in the circumstances of the case.

2. The averments made in the petition in brief are as follows:

Petitioner was engaged by the 2nd respondent as casual mazdoor with effect from May, 1982 to December, 1989 for a period of 697 days without any break. He was engaged for a period of 210 days as per muster rolls which exclude holidays and national holidays. If they are included it comes to 270 days. In support of this contention, mazdoor card/certificate issued by the 2nd respondent is filed. Further, Petitioner was engaged on August, 17th on voucher basis at various places under the jurisdiction of 2nd respondent which was subsequently merged in Bharat Sanchar Nigam Limited. He was asked to work under various contractors. Because of his illiteracy he could not know his position as per law and he continued to work upto January, 2007. His services were terminated by the respondents by directing the concerned contractors not to engage him from 1.2.2007 orally. Aggrieved by this he made a representation for which 1st respondent issued proceedings dated 25.7.2007 stating that as per present status in Bharat Sanchar Nigam Limited no casual mazdoor be engaged/employed. In fact 2nd respondent is engaging many casual mazdoors and to the knowledge of the Petitioner, Subbaiah and Pratap Reddy are still working in that capacity and they are far juniors to the Petitioner. Respondent thus, violated the provision of Sec.25F of Industrial Disputes Act, 1947 by terminated the service of the Petitioner and further continuing the services of his juniors. Hence, the petition.

3. Respondents filed their counter with averments in brief as follows:

Previously Petitioner has worked as causal mazdoor for some period. He was disengaged due to lack of work in the Department. His contention that he was removed though several juniors were continued in service is false. Petitioner filed OA 1420 of 1995 before Hon'ble Central Administrative Tribunal, Hyderabad while dismissing the same, respondents were directed to consider the case of the Petitioner as and when they decides to engage casual labour for the work to be executed by the casual mazdoors. There is an absolute ban on engagement of casual labour as per the policy at the Department except in special circumstances restricted to a period of 100 days vide letters dated 30.3.1985, 22.6.1988, and 15.6.1999. Thus, there is no scope for engagement of the Petitioner. No cable work was carried out by engaging juniors and freshers as casual labour as alleged by the Petitioner. Cable laying work is being carried out by contractors on approved tenders by GMTD, Rajahmundry. Hence, the petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner he examined himself as WW1 and got marked Ex. W1 to W2. On behalf of the respondent MW1 was examined and no documentary evidence was adduced.

5. Heard either party.

6. The points for determination are:

1. Whether the impugned oral termination order dated 1.2.2007 is liable to be set aside. If so on what grounds?

2. To what relief Petitioner is entitled to?

7. **Point No. 1:**

It is the contention of the Petitioner that his services have been terminated by the respondent with effect from 1.2.2007 whereas respondent is categorically denying the truth of his contention. Whereas while deposing as WW1 Petitioner has claimed that he worked as casual mazdoor for the respondent from May, 1982 to December, 1989 only. He further claimed while he was under cross examination that he did not work after December, 1989 due to his ill health and that he did not receive any notice from respondent in January, 2007. Thus, it is clear that the contention of the Petitioner that respondent terminated his services on 1.2.2007 is not at all correct. He himself voluntarily failed to attend to his duties after December, 1989. Thus, the question of respondent terminating his services either legally or illegally does not arise and thus, the question of reinstatement the Petitioner into service also does not arise.

This point is answered accordingly.

**8. Point No.2:**

No doubt, as can be seen from the evidence of MW 1, as per the scheme of grant of temporary status and regularization, introduced as per DOT/ND letter No.269-10-89 TN dated 7.11.89 the casual mazdoors who were curfently employed and put in minimum of 240 days of work in an year are eligible for grant of temporary status. This scheme has been introduced with effect from 1.10.1989. After introduction of the scheme, to gain benefit from the scheme the workman has to put in 240 days of work in an year but as can be gathered from the material record which has been discussed above, while deciding Point No.1, Petitioner ceased to work for the respondent voluntarily since December, 1989. Therefore, the question of his putting in 240 days of work subsequent to the introduction of the scheme will not arise and therefore he can not reap any benefit from the scheme. Further, in view of the finding given in Point No.1, Petitioner is not entitled for reinstatement into service.

9. In view of the fore gone discussion, it can be held that Petitioner is not entitled for any of the reliefs sought for.

This point is answered accordingly.

**10. Result:**

In the result Petition is dismissed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| WW1: Sri A. Jayaramulu | MW1: Sri A. Satya Narayana Murthy |

**Documents marked for the Petitioner**

| | |
|---|---|
| Ex. W1: | Photostat copy of mazdoor card |
| Ex. W2: | Photostat copy of lr.No.E.52/TSMs/Corrs. Vol-III/99-2000/47td dt. 25.7.2007 |

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 711.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मेनेजर, भारत संचार निगम लिमिटेड, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय **हैदराबाद** के पंचाट (संदर्भ संख्या 69/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 711.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 69/2008) of the Cent. Govt. Indus. Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**Present :** Smt. M. Vijaya Lakshmi,
Presiding Officer

Dated the 13th day of January, 2014

**INDUSTRIAL DISPUTE L.C.No. 69/2008**

**Between:**

Sri N. Satyanarayana,
S/o Nukaraju,
R/o Ramdas Peta,
Sidhartha Nagar,
Near Saiganagdhara Mitta,
Rajahmundry. ..... Petitioner

**AND**

1. The Chief General Manager,
   Telecom, (B.S.N.L.)
   Hyderabad.
2. The Sub-Divisional Officer,
   Telecom (B.S.N.L.)
   Rajahmundry. .....Respondents

**Appearances:**

For the Petitioner : Sri R. Yogender Singh, Advocate

For the Respondent : Sri Karoor Mohan, Advocate

**AWARD**

This is a petition filed by Sri N. Satyanarayana, the workman seeking for setting aside the oral termination order dated 19.3.2002 consequently directing the respondents to regularize his service immediately after completion of 240 days of his service, with continuity of service all other attendant benefits.

**2. The averments made in the petition in brief are as follows:**

Petitioner was engaged by the 2nd respondent as casual mazdoor with effect from 1.10.1986. He was engaged by the respondent till 18.3.2002 and from 19.3.2002 his services were terminated *vide* oral order. he was engaged for a period of 204 days in an year for the period commencing from 1.10.1986 to April, 1987 which excludes the national holidays and weekly offs. If those days are included the total days comes to more than 242 days in an year. Petitioner was thus engaged by the respondents for six years as casual mazdoor on muster rolls. Subsequently he was converted into a contract labour. He is entitled for regularization as per the seniority of casual mazdoor list insted his services were terminated with effect from 19.3.2002 even as a contract labour without assigning any reason

and without following the process contemplated under Sec. 25F of Industrial Disputes Act, 1947. More over, the persons who are far juniors to him are regularized by the respondents. Petitioner filed OA No. 1420/1995 before the Hon'ble Central Administrative Tribunal, Hyderabad wherein respondents were directed to engage the Petitioner whenever work is available. But on the pretext of existence of 'ban' he was not re-engaged. He was engaged on different spells with intentional breaks to deprive him of regularization. He filed WP No. 8195 of 2006 which was dismissed, but with observations that."

> "The issue raised in this writ petition namely whether the petition earlier worked as causally labour in the Respondent organization and if so, whether he is eligible for re-engagement as casual labour or not. And whether some of the juniors and freshers are engaged as casually labour. But denying the case of the Petitioner are all disputed question so fact, which can be decided only after adducing evidence by the parties and this Court in exercise of jurisdiction U/A. 226 of the Constitution of India, can not decide the same based on the averments made in the Writ Affidavit.
>
> The writ petition is devoid of merit and the same accordingly dismissed. However the Petitioner is at liberty to approach the appropriate forum provided under law."

In the said writ petition respondents admitted that they are engaging contractors for the work which previously done by engaging casual labour it is against law as laid down in the case of Management of Silver Sand Resorts *vs.* The Workman Silver Sand Employees Union 1996 (2) LLJ 1050 (Madras Division bench). Thus, its clear that respondents totally violated the provisions of Industrial Disputes Act, 1947 in terminating the services of the Petitioner. Hence, the petition.

**3. Respondents filed their counter with averments in brief as follows:**

Petitioner previously worked as casual worker for some period and thereafter he was disengaged from service as there was no work in the department. His contention that he was removed though several juniors were continued in service is false. Petitioner filed OA 1420 of 1995 before Hon'ble Central Administrative Tribunal, Hyderabad while dismissing the same, respondents were directed to consider the case of the Petitioner as and when they decides to engage casual labour for the work to be executed by the casual mazdoors. There is an absolute ban on engagement of casual labour as per the policy at the dept. except in special circumstances restricted to a period of 100 days *vide* letters dated 30.3.1985, 22.6.1988 and 15.6.1999. Thus, there is no scope for engagement of the Petitioner. No cable work was carried out by engaging juniors and freshers as casual labour as alleged by the Petitioner. Cable laying work is being carried out by contractors on approved tenders by GMTD, Rajahmundry. Hence, the petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner he examined himself as WW1 and got marked Ex. W1 to W6. On behalf of the respondents MW1 was examined and no documentary evidence was adduced.

5. Written arguments for Petitioner were filed and the same are received and considered. Heard either party.

**6. The points for determination:**

1. Whether the impugned oral order dated 19.3.2002 is liable to be set aside. If so on what grounds?
2. To what relief Petitioner is entitled to?

**7. Point No. (1):**

It is an admitted fact that Petitioner worked as casual mazdoor for the respondent previously. It is his contention that his services were orally terminated by the respondent with effect from 19.3.2002 whereas, as can be gathered from the material on record, it is the claim of the respondents that the contention of the Petitioner that his services were orally terminated by the respondent is not at all correct.

8. MW1, the only witness who was examined for the Management, also claimed that there was no oral termination of services of the Petitioner. But the fact remains that Petitioner could not attend to the work of the respondent Management subsequent to 18.3.2002 Ex. W1 is the copy of the muster roll book pertaining to the Petitioner which indicates that he could work for the respondent upto 18.3.2002 only. The reasons for the same is being claimed by the Petitioner as termination of his serivces on the part of the respondent, whereas respondent has not chosen to assign any reason at all for the same. Further, the material on record is disclosing that Petitioner was constrained to apparoach the Central Administrative Tribunal and the High Court of Andhra Pradesh, questioning the correctness of disengagement of his service on the part of the respondent since 18.3.2002, which means, that he has been complaining all along that his services were orally terminated by the respondent since 19.3.2002. Thus, it is to be taken that his services were so terminated.

9. Whether such termination of services is legal and valid is a question now to be considered.

10. Petitioner as WW1 has categorically claimed that while terminating services of any workman respondent has to follow the eleborate procedure as laid down in Ex. W5 the letter of Department of telecommunication dated 17.6.1993. In caluse No. V of the said letter eleborate procedure has been laid down for retrenchment of the workers. This procedure is in adherence to the provisions of the Industrial Disputes Act, 1947. The Junior most casual

mazdoor is to be terminated, but not the seniors. Seniority list is to be pasted on the notice board, in a conspicuous place in the premises of the industrial establishment. One month's notice is to be given or in lieu of the said notice one month's wages have to be paid to the workman. The notice shall contain reasons for retrenchment and it shall be notified to the Ministry of Labour. There are some other such conditions which are also to be complied with as per this letter. Evidently, the said procedure has not been followed and the conditions mentioned there in were not complied while the Petitioner was disengaged/removed from service. Respondent is not denying the liability to follow all these conditions while disengaging a casual mazdoor and it is an admitted fact that petitioner has been working as casual mazdoor for the respondent.

11. In view of the foregone discussion, it can safely be held that the termination of services of the Petitioner is certainly neither legal nor valid and therefore, it is liable to be set aside.

This point is answered accordingly.

**12. Point No. II:**

Consequent to the finding in point No. I above, Petitioner is to be reinstated into service. As can be gathered from the muster roll of the Petitioner, which is marked as Ex. W1 Petitioner has put in more than 240 days of work in a span of one year. MW1 stated that the scheme of grant of temporary status and regularization has been introduced with effect from 1.10.1989 as per DOT/ND letter No. 269-10-89 TN dated 7.11.89 and that as per this all casual mazdoor who are currently employed and have rendered minimum of 240 days in a year are eligible for grant of temporary status. But, he claimed that after introduction of this scheme, Petitioner has not rendered minimum of 240 days in a year. This is a wrong statement. This can be said so since even as per the averments in the counter of respondent/Management Petitioner has worked for 240 days. Thus, services of the Petitioner ought to have been regularized and he ought to have been granted temporary status. As can be seen from the particulars of the work of the Petitioner given in the counter filed by the management there was no break period of more than one year prior to the year 1991-92 or subsequently. But he denied his right of regularization and grant of temporary status. For the same, no reasons are assigned. It is the categorical claim of the Petitioner that his juniors like, one Chitti Babu and others who have put in less working days than that of him, have been granted temporary status and were regularized in service. He further calaimed that in case of said Chitti Babu the break period of more than one year was also condoned. Even though Peitioner as WW1 has categorically made all these claims, respondent has not chosen to contradict the same in any manner by producing relevant records. The espondent/Management being custodian of all the service records of thier employees they will be in a position to disprove the contentions of the Petitioner by producing relevant records. Failure on their part to do so, certainly give rise to an adverse infrerence that they failed to produce records because, the said records, if produced, would render support to the contentions of the Petitioner, only.

13. As can be gathered from the contentions put forth for the respondent, it is their claim that by virtue of an order passed by the Central Administrative Tribunal, Hyderabad Petitioner is not entitled for any of the reliefs sought for. But, no such order is placed before this Tribunal by the respondent. On the other hand they are blaming the Petitioner for not placing such order before the Tribunal. Respondent who is taking shelter under the said order, is the person who is to produce the said order before this Tribunal to invite attention of this Tribunal to the said order. But they have not done so. Therefore, their contentions with this regard. can not be accepted. Moreover, the Central Administrative Tribunal got no jurisdiction to try the industrial disputes. Therefore, any order passed by the said forum touching the industrial dispute will be an order passed without jurisdiction.

14. It is the other contention of the respondent that as per the verdict of Hon'ble the Apex Court in the case of Umadevi, the popular verdict on service law, Petitioner's services can not be regularized. This contention is also is not an acceptable contention for the reason that in the case of Umadevi, the civil services and civil appointments were considered but not any industrial disputes. Industrial law is totally different from civil law. The industrial appointments and regularization of the services of workmen under the industrial laws, rules and regulations is totally different from that in the civil law/administrative law. Thus. both are already distinguished and it is held that the principles laid down in the case of Umadevi are not applicable to the industrial dispute.

15. As can be gathered from the material on record, the Petitioner, who is a casual mazdoor working for the respondent has been arbitrarily dealt with by the respondent. He has been entrusted with work for some days and has not been entrusted with the same for some days, discriminating him and with a view to deny regularization to him, as per the contentions of the Petitioner. For this there is no specific and acceptable answer from the respondent. Further more, as already discussed above, though eligibility and right have been accrued to the Petitioner long ago for grant of temporary status and for regularization of his services, the same was denied to him. Thus, he is entitled for regularization of services. He is entitled for consequential reliefs also. But, considering the financial implications if back wages are ordered, which may adversely affect the Respondent organization same is to be denied to the Petitioner.

16. By way of summing up the reliefs to be given the following is being stated:

Consequent to the finding give in point No. I respondent is to be directed to re-engage the Petitioner into service as casual mazdoor and further to regularize his services considering his service of 240 days put in long ago and giving effect to the said services. His seniority is to be fixed with retrospective effect. But as to the payment of wages are concerned the same shall be for the days during which he put in the work only but not any back wages. Consequent to the grant of temporary status and regularization of service mentioned supra, Petitioner shall be entitled for all consequential service benefits, like promotions and increments.

This point is answered accordingly.

**17. Result :**

In the result, petitions is allowed. The impugned oral termination order dated 19.3.2002 is hereby set aside. Petitioner shall be reinstated into service as casual mazdoor forthwith. Further he shall be granted temporary status and his services shall be regularized with retrospective effect considering 240 days of work he put in, long ago. His seniority also shall be fixed with retrospective effect consequent to his regularization. He is entitled for all other service benefits like grant of increments and promotions consequent to regularization also with retrospective effect except for any financial benefit. The financial benefit shall be extended to him as per the post in which he is to be regularised at present and since he starts to work in that capacity only. He is not entitled for any back wages.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 13th day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---|---|
| WW1: Sri N. Satyanarayana | MW1 Sri A. Veera Bhadra Rao |

**Documents marked for the Petitioner**

Ex. W1: Photostat Copy of muster roll

Ex. W2: Photostat Copy of orders passed in WP No. 8192/2006

Ex. W3: Photostat Copy of list of juniors of 91 candidates

Ex. W4: Photostat Copy of particulars of junior employee of WW1 *i.e.,* K. Chittibabu

Ex. W5: Photostat Copy of departmental order of M/o Telecommunication

Ex. W6: Photostat Copy of seniority list of casual mazdoors dt. 31.12.1996

**Documents marked for the Respondent**

NIL

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 712.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिश्नर, दिल्ली म्युनिसिपल कारपोरेशन, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 279/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 712.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 279/2011) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Anexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi, New Delhi and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42025/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 279/2011**

Shri Rajan Lal through
Hospital Employees Union.,
Agarwal Bhawan, G.T Road,
Tis Hazari, Delhi-110054. ....Workman

*Versus*

The Commissioner,
Municipal Corporation of Delhi,
Dr. S.P.Mukherjee Civic Centre,
J.L.Nehru Marg,
New Delhi-110002. ....Management

**AWARD**

Daily wagers working in various hospitals and dispensaries under Health Department of Municipal Corporation of Delhi (in short the Corporation) were to be regularized in service pursuant to policy framed in that

regard on the strength of Resolution No. 273 dated 27.06.1988, passed by the Corporation. Services of various daily wagers were regularized by the Administrative Officer (Health) and on being regularized, those daily wagers were put on probation for a period of two years. When audit was conducted, it came to light that the daily wagers, whose services were regularized pursuant to policy framed in compliance of Resolution No.273 dated 27.06.1988, obtained their appointment on fake/forged documents. Likewise, it was noted by the Health Department of the Corporation that one Shri Rajan Lal produced fabricated order purporting to his services having been transferred from SDN Hospital, Shahdara, to Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. Shri Lal joined his services on the said forged transfer order dated 04.08.2004 and worked with the Corporation till his services were dispensed with. Show cause notice was served upon him on 30.08.2008, to which notice he submitted a reply. Since he obtained service on the basis of fabricated transfer order, his services were terminated on 01.08.2008. Shri Lal raised a demand for reinstatement in service, which demand was not conceded to. Aggrieved by that act, he raised an industrial dispute before the Conciliation Officer, who entered into conciliation proceedings on 10.02.2009. Conciliation proceedings lasted for more than two years, but no settlement could arrive at. Shri Lal raised an industrial dispute before this Tribunal under the provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act) without being referred by the appropriate Government for adjudication under sub-section (1) of section 10 of the Act. Since he raised the dispute within the period of limitation provided under sub-section (3) and complied all requirements of sub-section (2) of section 2A of the Act, the dispute was registered as an industrial dispute.

2. In his claim statement, Shri Rajan Lal pleads that he joined services with the Corporation as a chowkidar on 04.08.2004. He was treated as daily rated/casual/muster roll worker and paid minimum wages fixed and notified from time to time. His counterparts, who were regular employees of the Corporation, were being paid their wages in proper scale of pay and allowances. Facilities like uniform, earned leave, casual leave, gazetted leaves etc. were denied to him. His services were dispensed with *vide* termination letter dated 01.08.2008, handed over to him on 12.08.2008. Action of the Corporation in terminating his services is illegal, unjust and *malafide* for the following, amongst other reasons:

(i) Job against which he was working is of regular and permanent nature, which is still continuing with the Corporation,

(ii) Action of the Corporation in terminating his services amounts to unfair labour practice, as provided under section 2(ra) read with item No.5 of Fifth Schedule appended to the Act,

(iii) Action of the Corporation is violative of Article 21 of the Constitution of India,

(iv) He is innocent and had not committed any misconduct. No memo or charge sheet was served upon him, not to talk of conducting any domestic enquiry.

(v) No seniority list was displayed, as required in case of retrenchment. No notice or pay in lieu thereof and retrenchment compensation was paid to him.

(vi) Show cause notice dated 30.01.2008 was given, which was duly replied by him,

(vii) He has completed more than 240 days continuous service in every calendar year, as contemplated by section 25B of the Act and could not be thrown out of the job in an illegal manner.

(viii) He has been meted out with hostile discrimination, since juniors to him have been retained in service Even otherwise, fresh hands have been taken in employment after terminating his services,

(ix) Action of termination of his services is violative of provisions of section 25F, 25G and 25H of the Act, read with rules 76, 77 and 78 of the Industrial Disputes (Central) Rules, 1957.

3. Claimant projects that he is unemployed since the date of termination of his services. Notice of demand was served on the Corporation by registered post on 05.09.2008. He raised a dispute before the Conciliation Officer on 10.02.2009 and conciliation proceedings lasted till 05.07.2011. Since the appropriate Government had not referred the dispute for adjudication, he approached this Tribunal with a direct dispute. Claimant seeks an award in his favour with a command to the Corporation to reinstate his service with continuity and full back wages, besides cost of litigation.

4. Claim was demurred by the Corporation projecting that there was no employer-employee relationship between the parties. Claimant gained employment with the Corporation on the basis of forged and fabricated order of transfer dated 28.07 2004. He presented that fabricated office order, on the basis of which order he was allowed to join his services with Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. During the course of audit, complete service record was got verified and it revealed that the claimant never worked with SDN Hospital Shahdara, from where he was allegedly transferred. Transfer order, presented by him, was a forged document. On verification of the record, hospital authorities confirmed that the claimant never worked with the said hospital and the transfer order was forged and fabricated one. Show cause notice dated 30.01.2008 was served, to which the claimant filed his reply. Facts detailed by him in the reply were absolutely

false, frivolous and untenable. No document was submitted by the claimant in support of his contentions raised in the reply. After considering his reply, his services were dispensed with on 01.08.2008. Operative portion of the said order runs as under:

> "In response to the above show cause notice, he has submitted his reply stating therein that all the documents are available with the department and the transfer order is available with the applicant. He has not submitted any documents related to his initial engagement. This shows that he was never engaged on daily wage basis by the Municipal Corporation of Delhi. However, he managed to work in Ayurvedic Panchkarma Hospital, Prashant Vihar on the basis of forged transfer order, as mentioned above. In view of the above, the fraudulent engagement of Shri Rajan Lal S/o Shri Om Prakash. Daily Wager, chowkidar, is hereby, terminated with immediate effect."

5. The Corporation projects that termination of services of the claimant does not amount to retrenchment, as defined under section 2(oo) of the Act. The Apex Court ruled in Mandivikar (2005 Lab 1C 4164) that services of an appointee seeking appointment by furnishing false caste certificate is liable to be terminated. Claimant is a wrong doer and cannot claim equity from this Tribunal. No notice or pay in lieu thereof and retrenchment compensation were liable to be paid. He has no claim, muchless the claim for reinstatement in service with continuity and full back wages.

6. On perusal of pleadings, following issues were settled:

(i) Whether the claimant submitted his joining report in Ayurveda Panchkarma Hospital, on the basis of forged documents? If yes, its effects.

(ii) Whether the claimant had not acquired any legal rights on rendering services from August, 2004 till 01.08.2008 in view of the facts stated in issue No. 1?

(iii) Whether termination order dated 01.08.2008 falls within the ambit of retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947?

(iv) Whether the claimant is entitled to the relief claimed, in his claim statement?

7. To discharge onus resting on him, claimant has examined himself. To rebut facts testified by the claimant, Dr Manju Verma was examined by the Corporation. No other witness was produced by either of the parties.

8. Arguments were heard at the bar. Shri Surender Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. Shri Vishwajit Mangla, authorised representative, raised submissions on behalf of the Corporation. Written submissions were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

**Issue No. 1**

9. In his affidavit Ex.WWI/A, tendered as evidence, claimant unfolds that he joined employment with the Corporation as chowkidar on 04.08.2004. He was treated as daily rated/casual/muster roll worker and paid minimum wages as notified from time to time. He rendered continuous service of 240 days in every calendar year. Show cause notice was served upon him on 30.01.2008, which was duly replied. His services were terminated *vide* letter dated 01.08.2008. However, during the course of his cross examination, he concedes that he was engaged for the first time by the Corporation on 04 08.2004. Prior to that date, he never worked with the Corporation. He admits that in tetter Ex.WW1/M1, it has been mentioned that he was an employee of SDN Hospital, Shahdara. He concedes that he never worked in the said hospital. He further admits that letter Ex.WW1/M1 and Ex.WW1/M2 are forged documents. According to him, these documents were given to him by one Hari Om Sharma, who was working in Town Hall, New Delhi.

10. In affidavit Ex.MW1/A, tendered as evidence, Ms. Manju Verma, declares that the claimant gained employment with the Corporation on the basis of forged and fabricated transfer letter dated 28 07.2004. He presented the said transfer order to Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. On the basis of the said transfer order, he was allowed to join in Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. During the course of audit, it came to light that the said transfer order was a fabricated document. Thereafter, show cause notice was served on Shri Rajan Lal on 30.01.2008. On consideration of reply to the show cause notice, his services were terminated *vide* order dated 01.08.2008. During the course of her cross examination, she concedes that no charge sheet was served on the claimant. No enquiry was conducted against him. No evidence was recorded against the claimant. She further concedes that no authority has recorded findings in respect of office order dated 24.08.2004, proved as Ex.WW1/11, to the effect that the said order was a fabricated one. Ex.WW1/11 is the office order issued on 24.08.2004 on the strength of which claimant was allowed to join his duties at Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, on being transferred from SDN Hospital. Shahdara.

11. Out of facts detailed by Ms.Manju Verma and conceded by the claimant, it came to light that the claimant never served SDN Hospital, Shahdara. Claimant joined his duties at Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, on the basis of the forged transfer order

Ex.WW1/M1. From facts projected by Ms.Verma and conceded by the claimant, it is crystal clear that the claimant joined his duties with Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, on the basis of forged document, purporting to be his transfer order from SDN Hospital, Shahdara.

12. As noted above, claimant used fake order, purporting to be his transfer order from SDN Hospital, Shahdara, to Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, and joined his services with the Corporation. As conceded by him, he never served SDN Hospital, Shahdara. Thus, facts recorded in the transfer order Ex.WW1/M1 are blatant lie. His act of joining services with the Corporation, on the strength of Ex.WW1/11, nowhere creates any right on the post in his favour. Person, who enters service by producing fake transfer order and obtains appointment on posts with the Corporation, does not deserve any sympathy or indulgence by this Tribunal.

13. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetrated or saved by application of any equitable doctrine. It is a matter of common knowledge that appointment on a post can be obtained in consonance with the recruitment rules. One had to move an application against an advertisement and thereafter he had to compete with all eligible incumbents, in order to show his right for appointment to the post. In case any incumbent obtains appointment by playing fraud on the authorities, he does not acquire any right to the post. An employee, who plays fraud on public authority in getting his appointment on a post, also commits fraud with the society and the Constitution. He does not have any right to the post on which appointment was obtained by playing fraud. These reasons persuade me to comment that by way of joining services with Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, the claimant had not acquired any right to the post. Issue is, therefore, answered in favour of the Corporation and against the claimant.

**Issue No. 2 and 3**

14. Admittedly the claimant joined services with Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi on the basis of forged document. However, it is also not disputed fact that he rendered service with the Corporation from 04.08.2004 till 01.08.2008. No dispute was raised by the Corporation to the effect that continuous service of 240 days, as contemplated by provisions of section 25B of the Act, was rendered by the Claimant, in preceding 12 months from the date of termination of his services. Question for consideration would be as to whether action of the Corporation in terminating services of the claimant, *vide* order dated 01.08.2008, amounts to retrenchment? For an answer to this proposition, definition of the term retrenchment is to be construed. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

15. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

16. Section 25-F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

17. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of Sub-section (1) of section 25B of the Act Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab, I.C. 1180) it was held that one year's period contemplated by Sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

18. In Ramakrishna Ramnath [1970 (2) LU 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

19. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under Sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539] wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act

20. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the Corporation. The Corporation was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists [1964 (1) LLJ 351], Adirshwar Laal (1970 Lab. I.C.936) and B.M Gupta [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

21. Claimant deposed that his services were terminated by the Corporation on 01.08.2008 without any notice or pay in lieu thereof. Out of facts unfolded by the claimant, it stands crystallized that neither notice nor pay in lieu thereof and retrenchment compensation was paid to him by the Corporation. Therefore, his retrenchment is violative of the provisions of section 25-F of the Act. Issues

are, accordingly, answered in favour of the claimant and against the Corporation.

**Issue No.4**

22. As testified by the claimant and reaffirmed by Ms. Verma, Show cause notice dated 30.01.2008 was served on him. He submitted reply to the said show cause notice which was found not to be satisfactory. However, no charge sheet was served on the claimant. No domestic enquiry was conducted against him. His services were dispensed with on the misconduct of entering service of the Corporation on the basis of a forged transfer order. When there is alleged misconduct, in that situation, domestic enquiry was need of the hour, as laid down by High Court of Delhi in Satish Chand Gupta (MANU/DE/8209/2007), Soran Singh [2009(1) LLJ 700] and Pushpa Rani (LPA No. 935 of 2011 decided on 13.07.2012). Law on the same lines has been laid by the Apex Court in Lila Singh [2007(2) LLJ 215] and Pravin Kumar Jain [1996(2) LLJ 674].

23. Evidently, it was a case of no enquiry. Service of the claimant was dispensed with without conducting domestic enquiry against him. Four standards were delineated by the Labour Appellate Tribunal in Buckingham & Carnatic Company Limited (1952 L.A.C. 490) to render managerial right of taking disciplinary action vulnerable , namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited [1958(1) LLJ 260], without any acknowledgement to the precedent in Buckingham & Carnatic case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

24. Enunciation (1) and (2), referred above, are addressed to the bonafides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona-fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, ine alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of *malafides,* victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

25. In Ramswarth Sinha (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent m Motipur Sugar Factory Pvt Ltd. [1965(2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In Ritz Theatre [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in Bharat Sugar Mills Ltd. [1961 (11) LLJ 644].

26. In Delhi Cloth and General Mills Company [1972 (1) LLJ 180], the Apex Court considered the catena of decisions over the subject and laid down the following principles:

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have

been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, then it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as *prima facie* proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendancy of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite *suo moto* the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Industrial Disputes Act, 1947.

26. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (supra), the Parliament inserted section 11-A in the Act, which came into force *w.e.f.* 15th of December, 1971. In the statement of objects and reasons for inserting section 11-A, it was stated :

> "In Indian Iron and Steel Company Limited and Another *Vs.* Their Workmen (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith,

victimization, unfair labour practice, etc, on the part of the management.

2. The International Labour Organisation, in its recommendation (No.119) concerning Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947....."

27. After insertion of section 11-A the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [(1973 (1) LLJ 278)] in the following propositions:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or *malafide.*

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is as held by this Court in The Management of Panitole Tea Estate *Vs.* The workmen, within the judicial decision of a Labour Court or Tribunal.,"

28. In Mahatta [(2012 (133) FLR 418)], the High Court of Delhi dealt with a series of decision on the topic and ruled that an industrial adjudicator, upon completion of pleadings, is required to proceed with the adjudication in the following manner:

(a) To examine whether the domestic enquiry preceding the punishment is pleaded to have been held and documents in support thereof filed.

(b) If the domestic enquiry is pleaded and the documents in support thereof filed, and the workman has challenged the validity of the said domestic enquiry, to determine whether such challenge is on any factual or purely legal grounds and frame issues on the same.

(c) However, if domestic enquiry is not pleaded or if pleaded but no documents in support thereof filed, the question of framing any issue as to domestic inquiry does not arise

(d) If an issue as aforesaid to the domestic inquiry has been framed and the employer has also sought opportunity in the alternative to establish misconduct before the Industrial Adjudicator, to frame issue thereon also, simultaneously with framing issues on validity of inquiry.

(e) To, after hearing the parties consider whether in the facts of the present case any prejudice (other than as above) is likely to be caused to either of the parties if evidence on both sets of issues is led together. Only on finding, by a reasoned order, a case of such prejudice or any other reason, the trial is to be bifurcated into two stages. Else, the parties to be directed to lead evidence on both sets of issues together.

(f) To, if the evidence on both sets of issues has been recorded together, first consider the evidence only on the aspect of validity of the inquiry and without being influenced in any manner whatsoever by the depositions of the witnesses on the merits of the dispute, *i.e* misconduct with which the workman was charged with. If the enquiry is found to be vitiated and a finding in that regard is returned, the Industrial Adjudicator may then proceed to adjudicate on the basis of evidence in that respect, whether misconduct has been established or not.

(g) The Industrial Adjudicator to, on case to case basis, decide whether the arguments on both aspects are to be heard together or at different stages. However, as aforesaid an endeavor is to be made to record the evidence of the witnesses on both issues in one go only.

29. In the light of above law it is held that when no domestic enquiry is conducted, the Corporation has a right to prove misconduct before this Tribunal. In order to establish misconduct of the claimant, Ms.Verma, Administrative Officer, unfolded facts. She details that the claimant gained employment with the Corporation on the basis of a forged and fabricated transfer order dated 28.07.2004. He presented that order to Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. On the basis of the said order, he was allowed to join duties in Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi, where he served till the fraud came to light. Show cause notice dated 30.01.2008 was served and after consideration of his reply, his services were dispensed with. Claimant could not rebut facts unfolded by Ms.Verma. On the other hand, he concedes that he never worked with the Corporation prior to 04.08.2004. He made a bold admission to the effect that he never served SDN Hospital, Shahdara. He admits that order Ex. WW1/M1 and Ex. WW1/M2 are fabricated. Therefore, it stands crystallized that the claimant presented fabricated transfer order, on the basis of which he was allowed to join his duties with Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. Order Ex.WW1/11 was issued to allow him to join his duties, which was a clear result of misrepresentation caused through letters EX.WW1/M1 and ExWW1/M2. Corporation has been able to establish misconduct of the claimant over the record.

30. Claimant committed forgery and fraud on the Corporation. By his fraudulent acts, he joined services with the Corporation at Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. His fraud does not vest him with a right on the post. Such a person cannot claim any right to continue on the post though fraud remained in the dark for a period of more than four years.

31. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commiserative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [(1963 (I) LLJ 291)] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal

or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfication of the Industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

32. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965 (I) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight- jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts."

33. In B.M.Patil [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and Justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

34. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab.l.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

35. In Bharat Heavy Electricals Ltd. [2005 (2) S.C.C 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.'' The Apex Court relied its judgement in C.M.C. Hospital Employees Union [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act

has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowda Educational Trust [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

36. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammeled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa [1995 (I) LLJ 960].

37. Forgery and fraud are serious misconducts, which entail loss of confidence in an employee. Such an employee does not have right of retention in service. As held above, the claimant presented a forged document, purporting to be his transfer order from S.D.N. Hospital, Shahdara, to Ayurveda Panchkarma HospitaL Prashant Vihar, New Delhi. On that forged document he joined at Ayurveda Panchkarma Hospital, Prashant Vihar, New Delhi. The claimant had not acquired any right to the post, on which he was allowed to join. Taking into account all these aspects, I am of the considered opinion that termination/ discharge from service is the appropriate punishment for an employee, who joins service on the basis of a forged document.

38. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by this Tribunal? In Firestone Tyre and Rubber Company of India (Pvt.) Ltd., [1973 (1) S C.C 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimization. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in Divisional Controller K.S.R.T.C, (N.W.K.R.T.C) [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

39. Termination of service commensurate to the misconduct committed by the claimant. It cannot be said that the punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by the Tribunal. The punishment of termination of service cannot be said to be harsh, indicating victimization. One who commits misconducts, like cheating and fraud loses confidence of his employer. Therefore, I am of the considered opinion that the claimant has miserably failed to project that punishment awarded to him is to be substituted by any other punishment.

40. No evidence worth name has been highlighted to show that the claimant has been victimized or the Corporation had *malafide* intention or followed unfair labour practice. Whether the penalty of termination of service would relate back to the date of order passed by the Corporation? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the *banafide* conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

41. In Phulbari Tea Estate [1960 (1) S.C,R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross

violation of the rules of natural Justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

42. In PH Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is *bonafide,* the Tribunal will grant the "approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made" Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so untill then the relation of employer and employee will continue in law and in fact".

49. D. C. Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

50. In Gujrat Steel Tubes Ltd [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy Vs. Presiding Officer (supra) has taken the view that full wages be paid untill the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R. Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R. Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

51. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify action of termination of service by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it at the action of termination of service is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

52. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava [1973 (1) SCC 656], Capt M. Paul Anthony [1999 (3) SCC 679] and South Bengal State Transport Corporation [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

53. In view of the facts detailed above, punishment of termination of service would relate back to the date of the order. Claimant could not bring it to light that the order of termination of service would be applicable from the date of the award and not from the date of the order. All these facts would project that punishment of termination of service awarded to the claimant, is legal, fair and justified. Claimant could not show any illegality in the order of termination of service passed by the Corporation against him. The issue is, therefore, answered in favour of the Corporation and against the claimant.

54. In view of above discussion, I am of the considered opinion that the claimant is not a person on whom the Corporation can depend upon. Therefore action of termination of his service is not to be interfered with by this Tribunal. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service. His claim statement is liable to be dismissed. Accordingly, it is concluded that the action of the Corporation in terminating services of the claimant is legal and justified. Claim statement is brushed aside. An award is passed in favour of the Corporation and against the claimant. It be sent to appropriate Govt. for publication.

Dated: 15.01 2014

Dr. R.K.YADAV, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 713.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर (साउथ), साउथ दिल्ली म्युनिसिपल कापोरेशन, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 10/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 713.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 116/2013) of the Cent. Govt. Indus. Tribunal/Labour Court-1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Garrison Egineers (P) Central, Delhi and their workman, which was received by the Central Govenrment on 28/01/2014.

[No. L-42025/03/2014-IR(DU)]
P. K. VENUGOPAL Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D.No 116/2013

Sh. Jayvir Singh
S/o Sh.Raghubansh Singh,
Through All Delhi Karmachari Union (Regd.)
52-C, Okhla Estate, Phase-3,
New Delhi-110020 …..Workman

*Versus*

M/s Garrison Engineers (P) Central,
434, Vest Cantt, Delhi Cantt -110010.
M/s K.Tech Engineers Builders Co. Pvt. Ltd.,
C-2488, Sushant Lok, Phase-1,
Gurgaon (Haryana)-122002. …..Managements

**AWARD**

Shri Jayvir Singh was engaged by M/s K. Tech Engineers Builders Co. Pvt. Ltd. (in short the contractor) and sent to work in the premises of M/s Garrison Engineers (P) Central (principal employer), where he served from June 1997 till June 2011. His services were dispensed with on 01.07.2011. He served a notice of demand on the contractor seeking reinstatement in service with continuity and full back wages. His demand was not conceded to by the contractor. Constrained by these circumstances, he raised a dispute before the Conciliation Officer, Since his claim was contested by contractor, conciliation proceedings ended into a failure. Since 45 days from the date of moving an application before the Conciliation Officer expired, Shri Jayvir opted to file his dispute before the Tribunal using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act .

2. In claim statement, Shri Jayvir Singh pleads that he joined services of the contractor/principal employer in June 1997 as mechanic. He worked to the entire satisfaction of his superiors. He rendered continuous service till 01.07.2011. Neither appointment letter was issued to him, nor attendance card, pay slip, gazetted holidays, ESI facilities, gratuity, minimum wages, as applicable under labour laws, were provided to him. Despite several visits, the contractor has failed to pay him his wages/bonus etc. No notice for termination of his service was given to him. Neither any charge sheet was served nor departmental enquiry was held against him. Action of termination of his services is illegal and uncalled for.

He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

3. Arguments were heard at the bar, on maintainability of the claim. Shri Rajesh Khanna, authorized representative, advanced arguments on behalf of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

4. Shri Rajesh Khanna, authorised representative of the claimant, submits that he is an employee of M/s K.Tech. Engineers Builders Co. Pvt. Ltd. According to him, the contractor engaged the claimant and sent him to the premises of Garrison Engineers (P) Central, Delhi Cantt., Delhi, where he served from June 1997 till June 2011. When

claim statement is perused, it came to light that except in the arrays of parties, where name of Garrison Engineers (P) Central has been mentioned, nothing is there in the claim statement to the effect that Garrison Engineers (P) Central is the principal employer. Claim statement nowhere projects that the claimant worked as contract employee with Garrison Engineers (P) Central, Delhi Cantt., Delhi, Claim statement merely presents that the claimant is an employee ot M/s K. Tech. Engineers Builders Co. Pvt. Ltd.

5. Clause (a) of section 2 of the Act defines appropriate Government. It would be expedient to know the definition of phrase 'appropriate Government'. Consequently, definition of the phrase is extracted thus:

"2(a) "appropriate Government" means—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment)Act. 1948(9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees and the State Board of Trustees section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (3l of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961(47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission Act 1975 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, an company in which not less than fifty one percent of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government;

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the Stated Government, as the case may be, which has control over such industrial establishment;

6. In relation to an industrial dispute, appropriate Government can either mean the Central Government or the State Government. The Central Government has been defined under section 3(8) and the State Government under section 3(60) of the General Clauses Act, 1897. In relation to an industrial dispute concerning :—

1. an industry carried on or under the authority of the Central Government, or a railway company or
2. an such controlled industry as may be specified in this behalf by the Central Government, or
3. a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act. 1948 (9 of 1948), or
4. the Industrial Finance Corporation of India Limited formed and registered under the companies Act, 1956, or
5. the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or
6. the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and

Miscellaneous Provisions Act, 1948( 46 of 1948), or

7. the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B. respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or

8. the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or

9. the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or

10. the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act. 1961 (47 of 1961), or

11. the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or

12. the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or

13. the Food Corporation of India established under section 3 of the Food Corporation Act, 1964 (37 of 1964), or

14. a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or

15. the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or

16. a Regional Rural Bank established under section 3 of the Regional Rural Banks Act. 1976 (21 1976), or

17. the Export Credit and Guarantee Corporation Limited, or

18. the Industrial Reconstruction Bank of India Limited, or

19. the National Housing Bank established under section 3 of the National Housing Bank Act. 1987 (53 of 1987), or

20. an air Transport service or

21. a banking company, or

22. an insurance company, or

23. a mine, or

24. an oil-field, or

25. a Cantonment Board, or

26. a "major port, or

27. any company in which not less than fity-one per cent of the paid-up share capital is held by the Central Government, or

28. any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or

29. the Central public sector undertaking, or

30. subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the appropriate Government would mean the Central Government".

7. In relation to any industrial dispute, other than those specified in sub clause (i) of clause (a) of section 2 of the Act, appropriate Government would be State Government. In other words, all industrial disputes which are outside the purview of sub-clause (i) are concern of the State Government under sub-clause (ii) of clause (a) of Section 2 of the Act. Thus, the general rule is that an industrial dispute raised between employer and his employee would be referred for adjudication by the State Government, except in cases falling under section 2(a)(i) of the Act. Consequently, where industrial dispute which does not fall within the ambit of section 2(a)(i) of the Act, appropriate Government cannot be the Central Government.

8. Who shall be the appropriate Government for the present dispute? Answer has been provided in clause (a)(ii) of Section 2 of the Act, which contemplates that in relation to any other industrial dispute the State Government is the appropriate Government. However, this Tribunal is not oblivious of the proposition that union territory of Delhi enjoins a special status under the Constitution. Delhi is a Union Territory having some special provisions with respect to its administration. Article 239 of the Constitution speaks that every union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Article 239 AA makes special provisions with respect to Delhi, detailing therein that the union territory of Delhi shall be called the National Capital Territory of Delhi and the administrator thereof appointed in article 239 shall be designated as the Lieutenant Governor. There shall be Legislative Assembly, and provisions of article 324 to 327 and 329 shall apply in relation the Legislative Assembly of the National Capital Territory of Delhi as they apply in relation to a State. The Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to the matters enumerated in the State List or the Concurrent List except the matters with respect to entires 1, 2 and 18 of

the State List and entries 64, 65 and 66 of that list, in so for they relate to the said entries 1, 2 and 18. The Council of Ministers shall be headed by the Chief Minister to aid and advise the Lt. Governor in exercise of his functions in relation of the matters with respect to which the Legislative Assembly has power to make laws. In case difference of opinion between Lt. Governor and his ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision the Ld. Governor is competent to take action in urgent matters. The Chief Minister shall be appointed by the President and Ministers shall be appointed by the President on the advise of the Chief Minister. Therefore, it is evident that though a Legislative Assembly is there in National Capital Territory of Delhi, yet it is a union territory administered by the President through the Administrator appointed by him. In case of difference of opinion between the Administrator and the Ministers, it is the decision of the President that prevails. Consequently the State Government merges with the Centre when Lt. Governor administer the Union Territory or in case of difference of opinion the President decides the issue.

9. State Government has been defined in clause (60) of section 3 of the General Clauses Act, 1897, in respect of anything done or to be done after commencement of the Constitution (7th Amendment) Act, 1956 in case of State, the Governor and in a Union Territory, the Central Government. Therefore, it is evident that for a Union Territory, no distinction has been made between the State and the Central Government. The President administers the Union Territory, through an Administrator appointed by him. In case of National Capital Territory, of Delhi, it is being administered by the President though the Lieutenant Governor. Though there is a Legislative Assembly and Council of Ministers, yet in case of difference of opinion between the Lieutenant Governor and Council of Ministers, the decision of the President shall prevail, which fact make it clear that for the purpose of administration of the union territory, the Central and the State Government merges over certain matter.

10. High Court of Delhi was confronted with such a proposition in M.K. Jain (1981 Lab. I.C. 62) wherein it was laid as follows:

> "The award was sought to be voided, *inter alia,* on the ground that by virtue of the constitution and composition of the Corporation, Central Government was the only authority competent to make a reference of the dispute to the Industrial Court and that the reference by the Lieutenant Governor of Delhi was, therefore, in excess of powers. Even otherwise no exception could be taken to the order of reference, even if it be assumed that Central Government was the appropriate Government, in as much as the distinction between the Central and the State Government in relation to the Union Territory in our constitutional framework is rendered illusory, Union Territory is administered by the President of India under Article 239 of the Constitution of India, acting to such extent as he thinks fit. Therefore the Administrator, to be appointed by him, in the case of Union territory, there is an amalgamation of the constitutional classification of legsialtive and executive powers between the Centre and the States. According to section 3(60) of the General Clauses Act, the "Central Government "in relation to the administration of Union Territory means the Administrator acting within the scope of authority given to him under article 239 of the Constitution of India and in terms of section 3(60) of the General Clauses Act, "State Government" as respects anything done or to be done in the Union Territory means the Central Government. In the case of Union Territory, therefore, the Central and State Governments merge and it is immaterial whether an order of reference is made by one or the other. This contention must, therefore, fail".

11. Again in Mahavir [97 (2002) DLT 922] the High Court was confronted with the same proposition. Relying the precedent in M.K. Jain (supra) with profit it was ruled that reference made by the Government of NCT of Delhi was not bad despite the fact that appropriate Government was the Central Government. Difference of State Government and Central Government goes to the brink of abolition when State Government has been defined as the Central Government by clause (60) of section 3 of the General Clauses Act and Delhi is being administered by the President through the Administrator appointed by him. Therefore, the aforesaid precedents make it clear that a status of union territory of Delhi can be termed as Central Government in certain matters.

12. Whether the Central Government can be termed as State Government for any purpose? Article 53 of the Constitution provides that the executive power of the Union shall vest in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 73 defines extent of executive power of the Centre, that is, on matters which shall be controlled and administered by the Central executive. It has been detailed therein that the executive power of the union shall extend—(a) to the matters with respect to which Parliament has power to make laws and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. The extent of the State's executive power is set out in article 161 of the Constitution. Administrative relations between the union and the states is to be dealt in accordance with the provisions of Article 256, 257, 258, 258A, 260 and 261 of the Constitution. Article

258A was added by 7th Amendment Act, 1956 to make a matching provision to clause (1) of Article 258 of the Constitution. While exercising powers contained in clause (1) of Article 258, the President is empowered to entrust union functions to a State Government or its officers. There was no provisions enabling the Governor of a State to entrust state functions to the Central Government or its officers. That lacuna was found to be of practicable difficulty and provisions of Article 258 A were inserted in the Constitution. Thus it is evident that arena of union executive powers and the state executive powers are well defined.

13. Clause (8) of section 3 of the General Clauses Act defines the Central Government in relation to administration of Union Territory, the Administrator thereof acting within the scope of authority given to him under Article 239 of the Constitution. Therefore, it is evident that Administrator of Government of N.C.T. of Delhi has been defined to mean as Central Government to administer the Union Territory of Delhi. Hence for the limited purposes, provided in the Constitution, executive functions of the Central Government can be entrusted to Government of a State or its Officers. The Central Government would not be termed as the State Government, when those functions are being executed by the State Government or its officers. So executive power of the Union can be exercised, in certain matters by the State Government or its officers but in that situation too the Central Government would not be termed as the State Government. The special provisions referred above would not grant jurisdiction to this Tribunal to entertain the dispute under sub-section (2) of section 2-A of the Act.

14. There is other facet of the coin. This Tribunal was constituted *vide* notification No. A-11020/33/75-CLT dated 30.9.76. It was provided in the notification that the Tribunal has been constituted under the powers provided in sub-section (1) of Section 7-A of the Act, with its head-quarter at New Delhi. Another notification was issued on that very date empowering the Tribunal to adjudicate applications moved in sub-section (2) of section 33-C of the Act, in relation to the workman employed in any 'industry' in the Union Territory of Delhi, in respect of which the Central Government is the appropriate Government. Therefore, the Tribunal has been empowered to adjudicate industrial disputes, in respect of which Central Government is the appropriate Government.

15. In view of the findings recorded above, it is concluded that the appropriate Government for M/s K. Tech Engineers Builders Co. Pvt. Ltd. is not the Central Government. Claimant cannot approach this Tribunal for adjudication of his dispute, under sub-section (2) of section 2-A of the Act. Resultantly, claim is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 13.08.2013 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 714.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 92/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/160/2002-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 714.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 92/2005) of the Cent. Govt. Indus. Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Post Master, Jaipur and their workman, which was received by the Central Government on 28/01/2014.

[No. L-40012/160/2002-IR (DU)]
P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

Sh. N.K. Purohit, Presiding Officer

**I.D. 92/2005**

Reference No. L-40012/160/2002-IR(DU) dated: 8.8.2005

Sh. Dharamveer
S/o Shri Mohanlal Sharma
R/o Village & Post Khajuwala
Society Road, Disit: Bikaner,
Bikaner-334023.

*V/s*

1. The Post Master
   Post Office, Khajuwala,
   Bikaner.
2. Superintendent Post Office
   Rani Bazar, Bikaner.

**PRESENT:**

For the Applicant : Sh. Ashok Joshi.

For the Non-Applicants : Sh. Brahmanand Sandhu.

**AWARD**

25.3.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of

Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial Dispute to this tribunal for adjudication:—

> "Whether the action of the management of the Post Master, P&T Department, Khajuwala, Bikaner in terminating the services of Shri Dharamveer S/o Shri Mohanlal Sharma w.e.f. 23.09.1993 is just & legal? If not, to what relief the workman is entitled?"

2. The workman in his statement of claim has pleaded that he was employed as Extra Departmental Dak Agent (EDDA) on 8.3.91 by the postmaster, Khajuwala, Bikaner but he was removed from service after four month. Thereafter, he was again employed on 8.12.91 as EDDA. He has further pleaded that despite he had worked continuously during period 8.12.91 to 23.9.93 as EDDA, non-applicant terminated his services on 23.9.93 without any notice or pay in lieu of notice in violation of provisions of section 25-F of the I.D. Act, & no seniority list was prepared as per Rules 77 & 78. Thus, the workman has prayed that his termination order dated 23.9.93 be set aside & has also prayed for his reinstatement with back wages & continuity of service.

3. In reply, the non-applicant has submitted that the non-applicant is not an industry' within the purview of section 2(j) of the I.D. Act in the light of decisions of Hon'ble Apex Court rendered in S.L.P. no. 587-878/92 & 3385-86/96, therefore, claim is not maintainable.

4. The non-applicant has also submitted that Sh. Jagdish Prasad who was working as EDA at post office Khajuwala, Bikaner was 'put off duty' *vide* order dated 8.3.91 of the Inspector, Post Office (North) sub-division Bikaner, therefore, the applicant was engaged by the Sub Post Master, Khajuwala as substitute provisional during period 8.3.91 to 7/91. Thereafter, the applicant had himself left the service. During period 9.7.91 to 31.7.91 & from 1.8.91 to 5.12.91 Sh. Narayan Harsh & Sh. Ramavatar Swami had worked as substitute/provisional. Thereafter, from 8.12.91 to 23.9.93 the applicant had worked as substitute/ provisional under EDA (Conduct & Service) Rules, 1964. On 24.9.93 Sh. Jagdish Prasad has joined his duties; therefore, the above stop gap arrangement automatically came to end.

5. The non-applicant has denied this fact that workman was engaged as EDDA. It has been submitted that under Rules 1964 there is no provision for preparing seniority list for substitute/provisional & in case of substitute/provisional no notice or notice pay was to be given to the applicant. Therefore, the provisions of section 25-F of the I.D. Act are not attracted.

6. The applicant has submitted his affidavit & documents Ex-W-1 to W-22 in support of his claim whereas the non-applicant has filed the counter affidavit of Sh. Kishori Lal Saini, Superintendent, post office, Bikaner.

7. Heard the Ld. Representatives on behalf of both the parties & perused the relevant record.

8. In view of the pleadings of the parties following questions crop-up for consideration:—

i. Whether non-applicant establishment is an Industry' u/s 2(j) of the I.D. Act?

ii. Whether the applicant has worked as EDDA during period 8.12.91 to 23.9.93 in the post office at Khajuwala & whose services were terminated on 23.9.93 in violation of provisions of section 25-F of the I.D. Act.

iii. What relief the applicant is entitled to?

**Point No. I**

9. The Ld. Representative on behalf of the non-applicant submits that P&T Department is not an industry, within the meaning of industry u/s 2(j) of the I.D. Act. In this regard he has relied on decisions of the Hon'ble Supreme Court rendered in SLP 3385-86/96 & 5877-878/92.

10. Per contra, Ld. Representative for the applicants contends that in view of the legal propositions laid down in decision rendered in 1 LLJ 1998 256 (S.C.) the non-applicant establishments is also an 'industry' u/s 2(j) of the I.D. Act.

11. In I LLJ 1998 255 G.M. Telecom *V/s* Srinivasa Rao & Others, the question which was placed specially before the Bench of Hon'ble three Judges of the Hon'ble Apex Court was whether the Telecom department of the Union of India was not an industry within the meaning of section 2(j) of the I.D. Act. The Hon'ble Bench decided that it was an 'industry'. In the said decision Hon'ble Apex Court has observed as under:—

> "A two-judge Bench of this Court in Theyyam Joseph's case (supra) held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, no an 'industry' within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench decision in Bangalore Water Supply (supra). In a later two-Judge Bench decision in Bombay Telephone Canteen 'Employees' Association case (supra), this decision was followed for taking the view that the Telephone Nigam is not an 'industry'. Reliance was placed in Theyyam Joseph's case (supra) for that view. However, in Bombay Telephone Canteen Employees' Association case (*i.e.* the latter decision), we find a reference to the Bangalore Water Supply case. After referring to the decision in Bangalore Water Supply case (supra), it was observed that if

the doctrine enunciated in Bangalore Water Supply case is strictly applied, the consequence is 'catastrophic. With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the Seven-Judges Bench decision in Bangalore Water Supply case (supra) by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply case (supra) or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back-nearly two decades earlier and we find to reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case (supra). We must, therefore, add that the decision in Theyyam Joseph case (supra) and Bombay Telephone Canteen Employees' Association case (supra) cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail."

12. The Ld. Representative on behalf of the non-applicant has not submitted the copies of the SLPs referred to by him in support of his contention but the decisions referred to by him has been considered in the decision supra. In Theyyam Josheph Case Hon'ble Apex Court held that the function of the postal department are part of the sovereign function of the state & Postal Department is not an 'industry' within the definition of section 2(j) of the I.D. Act. After considering earlier decisions in Theyyam Josheph Case and Bombay Telephone Canteen Employees' Association case, Hon'ble Apex Court has held that said decisions cannot be treated as laying down the correct law. Thus, in view of the legal proposition laid down by Hon'ble Apex Court in 1 LLJ 1998 255, the contention of the non-applicant that Postal Department is not an 'industry' is not sustainable.

**Point No. II**

13. The Ld. Representative for the applicant submits that applicant had worked as EDDA in the post office at Khajuwala during period 8.12.91 to 7/91 & 8.12.91 to 23.9.93. Despite, he had worked continuously for more than two years his services have been terminated on 24.9.93 without any notice or notice pay in violation of section 25-F of the I.D. Act. He further submits that the I.D. Act is a special Act & the Rules 1964 cannot override the mandatory provisions of section 25-F of the said act. The case of the applicant stands proved on the basis of his affidavit fit Acquittance Rolls Ex-W-1 to Ex-W-22, therefore, the applicant is entitled for his reinstatement with back wages.

14. Countering these submissions, the Ld. Representative on behalf of the non-applicants contends that the applicant was working as substitute/provisional during 'put off duty' period of Sh. Jagdish Prasad, EDA under the provisions of Rules, 1964. He was never appointed on the post of EDDA. Neither any appointment letter was not issued nor was any termination order passed in the matter of applicant. Since, Service Rules, 1964 were applicable on the applicant, compliance of provisions of the section 25-F of the I.D. Act was not required.

15. I have given my thoughtful consideration to the above rival submissions.

16. The applicant Sh. Dharamveer has stated that he had worked continuously during period 8.12.91 to 23.9.93 as EDDA on monthly basis salary but his services have been terminated by the non-applicant on 23.9.93 without any notice or notice pay in lieu of notice. The applicant has also submitted Acquittance Rolls Ex-W-1 to W-22 in support of his claim.

17. In rebuttal, the non-applicant's witness Sh. Kishori Lal Saini has stated that the applicant was not appointed as EDDA. The applicant has worked as substitute of Sh. Jagdish Prasad who was 'put off duty' & the above stop gap arrangement was done under the Rules, 1964. In cross examination he has admitted that the applicant had worked continuously during period 8.12.91 to 23.9.93 & monthly salary was paid to him during said period. He has also admitted that applicant was paid through Acquittance Rolls Ex-W-1 to W-22. He has also admitted that when 'put off duty' of Sh. Jagdish Prasad was revoked on 24.9.93, while removing the applicant no notice, notice pay or compensation was given to him.

18. Thus, the case of the applicant is that he had worked as EDDA during period 8.12.91 to 7/91 & 8.12.91 to 23.9.93 whereas non-applicant has contended that EDDA Sh. Jagdish Prasad was 'put off duty' on account of criminal proceedings against him and the applicant had worked as his substitute & this stop gap arrangement was done by Sub Post Master at local level & when Sh. Jagdish Prasad, EDA joined his duty, the applicant was removed from the service.

19. On perusal of the Acquittance Rolls Ex-W-4 to Ex-W-22, it reveals that they are pertaining to period Dec., 91 to Sep., 93. The non-applicant's witness Sh. Kishori Lal Saini has admitted that payment to the applicant was made through above Acquittance Rolls. In the said Acquittance Rolls the applicant has been shown as EDDA.

20. It is not in dispute that the applicant had continuously worked in post office at Khajuwala during period 8.12.91 to 23.9.93. Admittedly, when 'put off duty' of Sh. Jagdish Prasad was revoked on 24.9.93, the applicant was removed from the job. It is also not in dispute that prior to 23.9.93 the workman had worked under the non-applicant for more than 240 days during preceding 12 months from the said date. Admittedly, no notice or notice pay in lieu of notice was given to the applicant on 23.9.93.

21. This legal position is not in dispute that if a workman had worked for more than 240 days in preceding 12 months from the date of his alleged termination, his services cannot be terminated without complying with the mandatory provisions of section 25-F of the I.D.Act.

22. Section 25(j) of the I.D. Act says that the provisions of Chapter V-A shall have effect not withstanding anything inconsistence therewith contend in any other law, therefore, even if the applicant had worked as substitute or provisional for more than 240 days during 'put off duty' of Sh. Jagdish Prasad, EDA under provisions of Rules, 1964 during preceding 12 months from the date of alleged termination *i.e.* 23.9.93, the provisions of section 25-F are attracted, therefore, the act of the non-applicant in terminating the services of the applicant on 23.9.93 without any notice, notice pay or compensation was in violation of section 25-F of the I.D. Act.

**Point No. III**

23. The learned representative on behalf of the applicant has submitted that termination of the workman is in violation of the section 25-F of the I.D. Act therefore, the workman be reinstated with all consequential benefits.

24. This legal position is not in dispute that in case of non-compliance of section 25-F the workman can be reinstated with other consequential reliefs.

25. Earlier in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a workman who does not hold a post and a permanent employee.

26. In recent decision (2010) 1 SCC (L&S) 545 Jagbir Singh *V/s* Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D. Act, Hon'ble Apex Court has observed that:—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed."

27. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:—

> "While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour court can award compensation."
>
> "There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

28. In present matter, the applicant was orally engaged during 'put off duty' period of regular EDA. He was not given regular appointment. Further, his services were terminated 20 years ago & his dispute was referred in the year 2005. The applicant has not given any reason for inordinate delay in raising the dispute. Therefore, keeping in view the nature of employment & having regard to the entire facts & circumstances of the case, instead of reinstating him the interest of justice will be sub served by paying compensation to the workman instead & in lieu of relief of reinstatement in service.

29. Accordingly, the reference is answered in favour of the workman & it is held that the action of the non-applicant Department in terminating the services of the workman being in violation of section 25-F of the Act, is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs. 30000 (Thirty Thousand Only) instead & in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

30. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 715.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ पोस्ट मास्टर जनरल, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 32/2011) को प्रकाशित करती है,जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40011/09/2011-आईआर (डीयू)]
पी॰ के॰ वेणुगापाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 715.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 32/2011) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Post Master General, Jaipur and their workman, which was received by the Central Government on 28/01/2014.

[No. L-40011/09/2011-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

**PRESENT:**

N.K. Purohit, Presiding Officer

**I.D. 32/2011**

Reference No. L-40011/9/2011-IR(DU) dated 3.10.2011

Smt. Kaushalya Bai
Jawahar Colony
Jhalawar (Raj.)

*V/s.*

Chief Post Master General
Rajasthan Circle, Deptt. of Posts
Jaipur-302001.

**AWARD**

25.3.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

> "Whether the action of the Management of Chief Post Master General Rajasthan Division, Jaipur in treating the workman Smt. Kaushalya Bai as a 'Part Time Contingent Labour' and accordingly paying her only Rs. 1863 is legal & justified? what relief the workman is entitled to and from which date?"

2. Pursuant to the receipt of reference order registered notices were issued to both the parties.

3. The authority letters on behalf of the both the parties were filed on 21.12.11. The applicant sought adjournments on 21.12.11, 23.2.12, 30.4.12 & 2.7.12 for filing the claim statement. On 12.9.12 none appeared on behalf of the non-applicant, therefore, order to proceed ex-party was passed against the non-applicant & on said date one more opportunity for filing the claim statement was given to the applicant. On next date also the applicant did not file her claim statement. The representative on behalf of the applicant submitted that he could not contact the applicant and sought one more adjournment for filing claim statement but on subsequent date 24.2.13 neither applicant nor her representative appeared to file statement of claim. Thus, despite several opportunities provided to the applicant, she has failed to file her statement of claim.

4. In above factual backdrop, there is no material on record to adjudicate the reference under consideration on merits. It appears that applicant is not interested to contest the case further. Therefore, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

5. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 716.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, दिल्ली म्युनिसिपल कारपोरेशन, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 303/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/45/2011-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 716.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 303/2011) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi, New Delhi and their workman, which was received by the Central Government on 28/01/2014.

[No. L-42011/45/2011-IR(DU)]
P. K.VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No.303/2011**

Shri Azad Singh, S/o Shri Meer Singh, through
The General Secretary,
Municipal Employees Union,
Agarwal Bhawan, G.T. Road,
Tis Hazari, Delhi 110054 … Workman

*Versus*

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110006. … Management

**AWARD**

A daily wager safai karamchari was engaged by Municipal Corporation of Delhi (in short the Corporation) in the year 1968. His services were regularized by the Corporation with effect from 19.04.1974. At the time of regularization of his services, the daily wager safai karamchari projected his date of birth as 10.04.1947. The date of birth, so projected by the safai karamchari, was recorded in his service records. On the basis of date of birth recorded in his service record, the said safai karamchari superannuated from service on 30.04.2007. After superannuation of his service, he approached the Municipal Employees Union (in short the union) claiming that he was wrongly retired from service. According to him, he had submitted an affidavit To the Corporation in April 1974, wherein he claimed his date of birth as 10.04.1951. The union sent a notice of demand on his behalf pleading therein that he may be reinstated in service with continuity and full back wages, which demand was not conceded to by the Corporation. Ultimately, a dispute was raised before the Conciliation Officer. Since the dispute was contested by the Corporation, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, appropriate Government referred the dispute to this Tribunal for adjudication *vide* Order No. L-42011/45/2011-IRDU), New Delhi dated 12.08.011 with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi in terminating the services of Shri Azad Singh ex-Safai Karamchari on the basis of date of birth of Medical Board of Municipal Corporation of Delhi, *i.e.* 10.04.1947 instead of verifying the corrections of School Leaving Certificate, issued by Principal, Govt. Boys Secondary School, Chirag Delhi, New Delhi, giving date of birth as 10.10.1951 without any retirement benefits etc. is legal and justified? What relief/benefits the workman is entitled to and from which date?"

2. Claim statement was filed by the safai karamchari, namely, Shri Azad Singh pleading therein that he was employed by the Corporation as a daily wager in the year 1968. He was paid minimum wages notified from time to time under the Minimum Wages Act, 1946. He rendered continuous service to entire satisfaction of his superiors. As such, his services were regularized with effect from 19.04.1974. At the time of regularization of his service, the Corporation asked him to submit some proof regarding date of his birth. Since he was not well educated and no document was traceable at that time, he submitted an affidavit to the Corporation in the year 1974, wherein date of birth was detailed as 10.04.1951, as disclosed by elders in the family. Subsequently, he was medically examined and as per medical records, his date of birth was shown as 10.04.1947. On the basis of his medical examination, he was retired from service on 30.04.2007. Subsequently, he got school leaving certificate from the Government Boys Secondary School, Chirag Delhi. New Delhi, where he studied upto the 5th standard, in school leaving certificate, his date of birth is mentioned as 10.10.1951. He submitted copy of school leaving certificate to the Corporation, but his services were terminated with effect from 30.04.2007, in the guise of attaining age of superannuation. The action of terminating his services is totally illegal, mala fide, unjustified for the following, amongst other reasons:

(i) Because his correct date of birth is 10.10.1951 as per school leaving Certificate issued by the Principal, Govt. Boys Secondary School, Chirag Delhi, New Delhi, which is conclusive proof about his date of birth and as per his date of birth, the date of his superannuation will be 2011.

(ii) Because as per affidavit submitted by him to the Corporation, his date of birth is 1951 and even as per that date, he would have retired only in 2011.

(iii) Because the Corporation has not paid any amount to him at the time of alleged retirement, consisting of all retiral benefits, *viz.* gratuity, computation of pension amount, leave encashment, insurance amount, general provident fund etc.

(iv) Because the Corporation has forced non-employment on him in the guise of attaining age of superannuation.

(v) That in the case of retrenchment, no seniority list was displayed, no notice was given, nor any notice pay was either offered or paid to him. No service compensation was either offered or paid to him.

(vi) He has not committed misconduct of any kind whatsoever. He has not been served with any charge sheet. No domestic enquiry was conducted against him and he was not afforded any opportunity of being heard.

(vii) That even otherwise, the impugned termination of service is violative of Section 25F, G and H of the Industrial Disputes Act, 1947 read with Rules 76, 77 and 78 of the Industrial Disputes (Central) Rules, 1957.

(viii) That juniors to him have been retained in service while he was thrown out of job.

(ix) That the action of the Corporation is violative of Article 14, 16 and 21 of the Constitution of India.

3. The claimant projects that a notice of demand was sent to the Corporation on 17.09.2008. He is unemployed since the date of his forced non-employment, that is from 30.04,2007. He claims that an award may be passed declaring action of the Corporation in terminating his services on the basis of date of birth recorded as per findings of medical board instead of verifying correctness of date of birth from school leaving certificate and he may be reinstated in service with continuity and full back wages, besides costs of litigation.

4. Claim was demurred by the Corporation pleading that the claimant superannuated from service on 30.04.2007, since his date of birth was disclosed by him as 10.04.1947 at the time of his medical examination conducted at the time of regularization of his services. At the time of preparation of his service book and filling of nomination form for his provident fund, he gave his date of birth as 10.04.1947. Since he gave his date of birth as 10.04.1947, it was recorded in his service records. On the basis of the said date of birth, he was superannuated from service on 30.04 2007. The Corporation disputes that date of birth of the claimant is 10.10.1951. It has been projected that action of superannuating him on 30.04.2007 is in accordance with law. The claimant projects a wrong claim. He is not entitled for any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim may be dismissed, pleads the Corporation.

5. On perusal of pleadings, following issues were settled:—

(i) Whether date of birth of the claimants 10 04.1947? If so, its effects.

(ii) As in terms of reference.

(iii) Relief.

6. To discharge onus resting on him, claimant entered the witness box to testify fact. No witness was examined by the Corporation.

7. Arguments were heard at the bar Shri Pradeep Kaushik, authorized representative, advanced arguments on behalf of the claimant. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

**Issue No. 1**

8. In affidavit Ex.WW1/A, tendered as evidence, the claimant unfolds that his date of birth is 10.10.1951, as per school leaving certificate issued by Government Boys Secondary School, Chirag Delhi, New Delhi. His date of birth has been wrongly shown as 10.04.1947 by the Corporation in his service records. The said date of birth was recorded on the basis of his medical examination, conducted at the time of regularization of his services. During course of cross examination, he projects that he is a school drop out from 6th standard. When he was engaged by the Corporation for the first time, he was aged about 20-21 years. He joined services of the Corporation for the first time in 1968. Ex. WW/M1 bears thumb impression as well as his signatures at points A and B respectively. School leaving certificate Ex. WW1/6 was obtained by him about 20-22 years ago. He never submitted copy of school leaving certificate to the Corporation.

9. When facts unfolded by the claimant are appreciate, it came to light that he wants to rely on copy of school leaving certificate to project that his date of birth is 10.10.1951. Corporation claims it to be a forged document. When Ex.WW1/6 is scanned, it came to light that this document has been created with the help of a photocopier machine. Reasons for this conclusion are that from column where name of the student is to be mentioned, two halves of a page were kept together to obtain a photocopy. From that column till the end, where reference relating to students granted stipend is mentioned, two halves are kept together to project a complete document. Thus, it is apparent that this document has been obtained through a mechanical process to project it to be facsimile of a school leaving certificate issued by Government Boys Secondary School, Chirag Delhi. New Delhi. Furthermore, this document speaks that the claimant got admission in that school on 04.05.1967 and left on 21.10.1967. Document purports to have been issued on 15.07.1983 by the Vice Principal, Government Boys Secondary School, Chirag Delhi, New Delhi. However at the top of the document, year 1988 has been mentioned Discrepancy in date of issue and year to which this document purports speak volumes about its genuineness. The fact that two halves were put together to obtain a photocopy also casts aspersions on authenticity of the document in question. Furthermore, claimant had opted not to produce certificate in original for consideration of this Tribunal. These reasons constrain me to conclude that this document cannot be held to be a genuine one.

10. Photocopy of affidavit purported to have been sworn on 10.04.1974 has been proved by the claimant as Ex. WW1/7. This document projects date of birth of the claimant as 10.04.1951 Ex.WW1/M1, on which thumb impression and signatures are admitted by the claimant to

be his own, project date of birth of the claimant as 10.04.1947. Ex.WW1/M1 was signed by the claimant when he was to be medically examined, at the time of regularization of his service with the Corporation. Besides the above documents, a nomination form, signed by the claimant at point A in favour of Smt. Omwati, his wife, declaring her as nominee for provident fund, is also placed over the record. In the same manner, an application, signed by the claimant authorizing the Corporation to deduct subscription of provident fund out of his wages bear his signatures at point B Signatures of the claimant on nomination form and application, authorizing the Corporation to deduct subscription of provident fund out of his wages, are compared with his signatures appearing on Ex. WW1/M1, statement of claimant recorded on 25.05.2012, his affidavit dated 18.02.2012, claim statement dated 22.09.2011 as well as authority letter authorizing Shri Surender Bhardwaj to conduct the matter, singed on 22.09.2011. On perusal of these signatures, I am of the considered opinion that signatures on nomination form and application, submitted to the Corporation to deduct subscription of provident fund out of his wages, are of the claimant. In Ex. WW1/M1 and application, given for deduction of provident fund, date of birth of the claimant has been mentioned as 10.04.1947. Ex. WW1/M1 was signed by the claimant, when he was medically examined at the time of regularization of his service while application form authorizing deduction of provident fund was signed by the claimant on 12.09.1977. Therefore, when the above documents were signed and acted upon, stand of the claimant has been that his date of birth was 10.04.1947.

11. Surprisingly, in affidavit Ex.WW1/7, the claimant had not appended his signatures Ex.WW1/7 purports to have been sworn on 10.04.1974, wherein he gives his date of birth as 10.04.1951. Thus, three dates of birth have emerged over the record, one as 10.04.1947, the second as 10.04.1991 and the third as 10 10.1951. For none of these dates of birth, the claimant brought evidence over the record to establish it to be correct one. He opted not to examine an officer of the Corporation who recorded an entry as to his date of birth in Register of Birth and Deaths, someone from Government Boys Secondary School to project that Ex. WW1/6 is copy of school leaving certificate issued by the said school nor he had examined anyone from his family to prove his correct date of birth. Contra to it, he projected his date of birth as 10.04.1947 to the Corporation at the time of regularization of his services and even two years thereafter Date of birth as 10.04.1947 was projected by the claimant and acted upon by him, while in service of the Corporation. Under these circumstances, it can be said that date of birth of the claimant is 10.04.1947. This fact gets reaffirmation from events unfolded by the claimant when he testified that he joined services with the Corporation for the first time in 1968 and at that time he was aged about 20-21 years. In view of these reasons, it is conceded that date of birth of the claimant is 10.04.1947. Issue is, therefore, answered in favour of the Corporation and against the claimant.

**Issue No. 2**

12. As projected above, claimant got recorded his date of birth as 10.04.1947 with the Corporation at the time of regularization of his service. A Government servant who has declared his age at initial stage of his employment is, of course, not precluded from making a request later on for correction of his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded. For seeking correction of date of birth, the Government servant must move the authorities at the earliest, without any unreasonable delay.

13. Normally, in public service, with entering into the service, even the date of exit which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all service, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

14. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules, a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant.

15. In Daksha Prasad Deka [1970 (3) SCC 624], the Apex Court ruled date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

16. In Rangadhar Mallik [1993 Supp.(1) SCC 763], Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall

not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. The Apex Court set aside the order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any representation for correcting his date of birth till September 9, 1966.

17. In Harnam Singh [1993(2) SCC 162] above proposition of law was again re-iterated and it was observed:

> "A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correct from of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

18. An application for correction of date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. Unless a clear case on the basis of clinching materials, which can be held to be conclusive in nature, is made out by the claimant and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such connection is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth.

19. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless *prima facie* evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

20. Procedure for correction of date of birth is detailed in Fundamental Rules which governs service conditions of Government employees. Fundamental Rules have been adopted by the Corporation, hence those rules apply to the claimant. Note 6 appended to Fundamental Rules 56 speaks of alteration of date of birth of Government servants. For sake of convenience, provisions of Note 6 are extracted thus:

> "F.R.56. 1(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.
>
> .....
>
> .....
>
> **Note 6 :** The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor- General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if—(a) a request in this regard is made within five years of his entry into Government service:—(b) it is clearly established that a genuine *bone fide* mistake has occurred; and (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

21. As projected above, the claimant never applied to the Corporation for correction of his date of birth. He claims to have obtained his school leaving certificate about 20 years ago but opted not to submit it to the Corporation for correction of his date of birth. In entire claim statement, he nowhere speaks that he moved the Corporation for correction of his date of birth. Therefore, it is emerging over the record that the claimant had not made any application to the Corporation for correction of his date of birth till the date of his superannuation. Now, by way of present dispute, he wants correction of his date of birth. Admittedly, period of limitation for moving such an application has run down. Claimant cannot be allowed to move an application for correction of his date of birth by way of raising an industrial dispute, after his superannuation.

22. There is other facet of the coin. Claimant has been superannuated on reaching age of 60 years. Question may creep up whether act of superannuating the claimant amounts to retrenchment. For an answer to this proposition, definition of the term retrenchment is to be construed. Clause (oo) of section 2 of the Act defines retrenchment. For sake of convenience, the said definition is extracted thus:

> "2(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted .by way of disciplinary action, but does, not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

23. As enacted by the Act, act of the Corporation in superannuating the claimant on reaching age of superannuation does not amount to retrenchment. Judgements of Sukhdeo Chokd Waghmare & Trustees of Bombay Port Trust [2004 (1) PLJR 289(SC)] and Sahim Ram [1995 Supp. (1) SCC18] are relied by the claimant. Facts on which the aforesaid judgements were handed down are distinct and different than the facts of the present controversy. In view of these circumstances, aforesaid precedents do not provide accolade to the claimant. The issue is, therefore, answered in favour of the Corporation and against the claimant.

**Relief**

24. The claimant could not project a case for correction of his date of birth. His date of birth is 10.04.1947. He has been rightly superannuated on 30.04.2007. In view of the above reasons, it is evident that the action of the Corporation in terminating the claimant on attaining the age of superannuation found to be justified. No relief is available to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: January 29, 2014

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 717.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, कलावती सरन चिल्ड्रेन्स हॉस्पिटल, नई दिल्ली के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 53/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/204/2011- आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 717.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 53/2012) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Kalawati Saran Children's Hospital, New Delhi and their workmen, which was received by the Central Government on 28.01.2014.

[No. L-42011/204/2011-IR(DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R. K YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, DELHI**

**I.D.No.53/2012**

The General Secretary,
Kalawati Saran Children's Hospital
Employees Association (Regd.)
112/2 LHMC Staff Quarters,
Panchkula Road,
New Delhi-110001. .....Workmen

*Versus*

The Director,
Kalawati Saran Children's Hospital,
Room No. 146, New Building,
Bangla Sahib Road,
New Delhi- 110001. .....Management

**AWARD**

A society, registered under the Societies Registration Act, 1860, raised an issue before High Court of Delhi by way of a writ petition alleging therein that an illegal course with the name of "In Service Training Course for Medical Lab Technology" was being run by Safdarjung Hospital. It was claimed that the course being run by Safdarjung Hospital was not approved by All India Council for Technical Education, under the provisions of All India Council for Technical Education Act, 1987. The course was also not recognized by the Department of Technical Education, Ministry for Human Resources Development, Government of India, New Delhi Laboratory personnel are appointed by various hospitals from amongst the persons who undergo the course referred above. Such personnel are not well qualified to help health care system. Directions were sought from the High Court to issue a command to the concerned authorities to immediately close down such unrecognized and illegal courses, being run in the aforesaid hospital. Director General of Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi, filed an affidavit through the Chief Medical Officer (Hospital Administration) before the High Court, wherein it was sworn that suitable amendment to recruitment rules of Lab. Assistant would be recommended to the Ministry of Health and Family Welfare. It was further detailed therein that Medical Laboratory Technology course of one year duration has been discontinued. Separate syllabus for two year Medical Laboratory Technology diploma course has been drawn after amendment of the recruitment rules. Candidates who are qualified in Medical Laboratory Technology Diploma from recognized institutions, approved by All India Council for Technical Education, would be considered for appointment to the post of Laboratory Assistant.

2. Affidavit of the Chief Medical (Officer Hospital Administration), office of the Director General of Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi, was taken over the record by the High Court. The High Court believed that recruitment rules for Laboratory Assistant would be amended and candidates qualified in Medical Laboratory Technology diploma from recognized institutions, approved by All India Council for Technical Education, would be appointed as Laboratory Assistant. Accepting the said affidavit as assurance for amendment of the recruitment rules for the post of Laboratory Assistant, the writ petition was disposed off by the High Court, *vide* order dated 08.01.2002.

3. Pursuant to the above orders, Director General (Health Services), Ministry of Health & Family Welfare, Government of India, New Delhi, issued instructions to the Medical Superintendent, Kalawati Saran Children's Hospital, New Delhi, to amend recruitment rules for the post of Lab. Assistant. It was emphasized that qualification for the post of Lab. Assistant be kept as 10+2 examination certificate in Science stream from recognized Board or University or equivalent, besides diploma in medical Laboratory Technology, recognized by All India Council for Technical Education or any other authority authorized by the Government. It was made clear that qualification proposed for direct recruitment shall apply in the case of promotes also, especially when recruitment rules for feeder post of Lab. Attendant do not specify any qualification. Medical Superintendent was called upon by the Office of the Directorate General to send amended recruitment rules for the post of Lab. Assistant at the earliest. Despite the above exercise, recruitment rules are yet to be amended.

4. Shri Roop Singh, joined services of Kalawati Saran Children's Hospital (hereinafter referred to as the Hospital) as Hospital Aid on 01.02.1979. He was promoted as Lab. Attendant on 24.09.2004. On 16.10.1999, he was again promoted to the post of Lab. Assistant, on recommendations of Departmental Promotion Committee. *Vide* Order dated 01.07.2010, the Hospital felt conscious of the fact that his promotion may amount to contempt of court, hence Shri Roop Singh was reverted to the post of Lab. Attendant Order dated 16.10.2009, on the strength of which Shri Roop Singh was promoted as Lab. Assistant, was cancelled. Aggrieved by that act, Shri Roop Singh approached the Kalawati Saran Children's Hospital Employees' Association (hereinafter referred as the Association) for redressal of his grievance. The Association took up his case as their own. A demand was raised before the Hospital for withdrawal of the order dated 01.07.2010, which demand was not conceded to Ultimately, the Association raised a dispute before the Conciliation Officer. Since the Hospital contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No. L-42011/204/2011-IR(DU). New Delhi dated 24.02.2012 with following terms:

> "Whether action of the management of Kalawati Saran Children's Hospital, New Delhi in withdrawing the promotion given to the workman, Shri Roop Singh, S/o late Shri Ramji Lal from the post of Lab. Assistant to Lab. Attendant with effect from 01.07 2010 is legal and justified? What relief the workman is entitled to?"

5. Claim statement was filed by Shri Roop Smgh pleading that he joined the post of Hospital Aid on 01.02.1979 with an initial salary of Rs. 349.00. Thereafter, he

was granted grade scale of Rs. 3050.00, since he became a matriculate. On recommendations of the Departmental Promotion Committee, the Hospital promoted the claimant to the post of Lab. Assistant *vide* office order No. ASCH/R/R/2009-10/4031 dated 16.10.2009. He was drawing a salary of Rs. 16795.00 per month, with grade pay of Rs. 2000.00. His promotion, pay and allowances and other facilities were withdrawn office order No. KSCH/R/R/CELL/2010-11/2444 dated 01.07.2010. The claimant is presently working as Lab. Assistant and drawing salary of Rs. 24,077.00. It is prayed that an award may be passed directing the Hospital to withdraw order of reversion of the claimant from the post of Lab. Assistant to Lab, Attendant nullifying the order dated 1.7.2010.

6. Claim was demurred by the Hospital stating that the claimant was appointed on 01.02.1979 to the post of Hospital Aid/Lab. Attendant, in the scale of Rs. 196-3-220-EB-2-232. The services of the claimant were also taken as LDC against leave vacancy in the scale of pay of Rs. 260-6-290-EB-8-390-10-400 on purely ad-hoc basis with effect from 21.07.1984 to 18.10.1984, which was extended from time to time from 19.10.1984 to 29.02.1985, 04.03.1985 to 17.04.1985, 18.04.1985 to 26.04.1985 and 20.04.1989 to 26.04.1989. He was reverted back to the post of Hospital Aid/Lab Attendant. The claimant was promoted to the post of Lab. Attendant with effect from 24.09.2004 in the scale of pay of Rs. 2610-4000 and again he was promoted to the post of Lab. Assistant with effect from 16.10.2009. At the time of his promotion from Lab. Attendant to Lab. Assistant, notified recruitment rule of Kalawati Saran Children's Hospital projected qualification as matriculate, with three years regular service as Lab. Attendant. In pursuance of High Court's direction in CM 9849 of 2001 and CW 3018 of 2000, titled Common Cause *vs.* UOI and others, dated 08.01.2002, Ministry of Health & Family Welfare and Directorate General Health Services, *vide* their letter No. A-12018/20/99-RR dated 06.11.2003, instructed that it may be ensured that only qualified candidates, having educational qualification of 10+2 with Medical Lab. Technology Diploma from a recognized institution approved by All India Council of Technical Education, are appointed to the post of Lab. Assistant. Since the claimant did not fulfil requisite criteria, he was reverted to the post of Lab. Attendant with effect from 01.07.2010, after serving notice, with due approval of the competent authority. The claimant is not entitled to any kind of relief since the Hospital had acted on the directions of High Court of Delhi. His claim it may be dismissed, pleads the Hospital.

7. On pleadings of the parties, following issues were framed:

(1) Whether amendment in recruitments rules by the management was retrospective?

(2) As in terms of reference.

8. Claimant has examined himself, besides Shri Shambu Nath Jaiswal to substantiate his claim. Shri Hukam Chand, Administrative Officer, entered the witness box to establish the case of the Hospital. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri N.A. Sebastian, authorized representative, advanced arguments on behalf of the claimant. Shri P.K. Verma, authorized representative, raised submissions on behalf of the Hospital. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record My findings on issues involved in the controversy are as follows:—

**Issue No. 1**

10. Kalawati Saran Children's Hospital (Lab. Assistant Recruitment) Rules, 1918 (hereinafter referred to as recruitment rules) were framed by the Government in exercise of powers conferred by proviso to Article 309 of the Constitution of India. These recruitment rules specify method of recruitment, age limit, qualification and other matters relating to the post of Lab. Assistant which are specified in Column 5 to 14 of the Schedule attached to the rules. Schedule appended to the rules provides that recruitment to the post of Lab. Assistant shall be made by way of selection Educational qualification for the post are; (i) Matriculation or its equivalent from a recognized Board, (ii) diploma in Medical Lab. Technology. 66-2/3% posts are to be filled by direct recruitment and 33-1/3% of the posts are to be filled by way of promotion. For promotion from the past of Lab. Attendant, the incumbent should be (i) matriculate, and (ii) having three years regular service as Lab. Attendant.

11. In order to have validly made recruitment rules under proviso to Article 309 of the Constitution, the President or such person, as he may direct, must first of all exercise powers vested in him under the said Article and make rule regulating recruitment etc. to the services and then publish the same in the official gazette or in any other prescribed manner for the purpose of informing the public at large. Amendment of recruitment rules must also be duly published. Mere unpublished decision of the Government to make rule or to amend the old rule will not by itself become a rule and bind a Government employee. President can make rules to validate retrospectively invalid administrative actions, hence such rules may have retrospective operations. When recruitments rules are given retrospective effect, it takes away a vested right. An employee cannot claim that rights vested in him prior to coming into force of rules, should be allowed to be enjoyed in spite of valid retrospective operation of rules.

12. Rules framed under proviso to Article 309 with retrospective operation does not violate Article 16 of the Constitution, Public weal cannot be irrelevant consideration

for amendment of recruitment rules. When the President or such person, as he may direct, makes rules under proviso to Article 309 of the Constitution, he does not act in his executive capacity but exercises legislative power conferred on him by the Constitution itself. Legislative measures cannot be attacked on the ground that it is malafide though it could be challenged on the grounds of incompetence of the legislative measure being in contravention to the provisions relating to fundamental rights or any other provisions of the Constitution. It is open to rule making authority to change the rules from time to time and in doing so, it is empowered to change the method of selection, according to exigencies of service. Modification of recruitment rules made by the President cannot be held to be bad merely because it does not mention the power under which it was made. However, when recruitment rules are silent on any particular point, Government can fill the gaps and supplement the rules Administrative instructions can supplement the rules framed under proviso to Article 309 of the Constitution but cannot supplant them. Where there is no rule or recruitment rules. are silent, the Government can full up gaps and supplement rules by issuance of administrative instructions, not inconsistent with the rules already framed. In peculiar situations where statutory recruitment rules could not be operated being unworkable, Government can exercise its executive powers and issue instructions in that regard. For executive instructions, its publication in official gazette is not *sine qua* non to validity of action taken under them.

13. Now facts are to be noted. Shri Hukam Chand swears in his affidavit Ex.WW1/A that the claimant was appointed to the post of Hospital Aid on 01.02.1979. He was promoted to the post of Lab. Attendant with effect from 24.09.2004. He was again promoted to the post of Lab. Assistant with effect from 15.10.2009 on recommendations of Departmental Promotion Committee. He lays emphasis that at the time of his promotion to the post of Lab. Assistant, essential qualification for promotion were; (i) Matriculate, and (ii) Lab. Attendant with three years regular service in the grade. High Court of Delhi, in its decision dated 08.01.2002, which is Ex. MW1/2, emphasized to ensure that only qualified candidates having essential qualification: (1) 10+2 pass, and (ii) diploma in Medical Laboratory Technology from a recognized institution, approved by All India Institute of Technical Education, are to be considered for appointment to the post of Lab. Assistant. To follow these instructions, coupled with instructions contained in letter No. A-12018/20/99-RR dated 06.11.2003, issued by Ministry of Health & Family Welfare, claimant was reverted to the post of Lab. Assistant with effect from 01.07.2010 since he was not fulfilling minimum educational qualification prescribed in office order No. KSCH/R/R/Cell/2010-11/2444 dated 01.07.2010.

14. In order dated 08.01.2002 proved as Ex. MW1/2, High Court took note of additional affidavit filed by Dr. A.H. Sinha, Chief Medical Officer (Hospital Administration), Department of Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi, wherein he swore that in meeting held on 10.04.2001, decision has been taken to update knowledge of laboratory personnel, and to conduct Medical Laboratory Technology diploma course as per guidelines of All India Council of Technical Education. He also assured the court that suitable amendments to the recruitment rules of Lab. Assistants would be recommended to the Ministry of Health & Family Welfare. The court was informed that Medical Laboratory Technology course of one year duration has been discontinued and a separate syllabus and prospectus to conduct two year Medical Laboratory Technology course in Safdarjung Hospital has been prepared. The proposal for approval/ recognition of two year Medical Laboratory Technology course has been submitted to All India Council for Technical Education. Proposal to amend recruitment rules so that only qualified candidates in Medical Laboratory Technology from recognized institutions approved by All India Council of Technical Education are considered for appointment to the post of Lab. Assistant, has been submitted to Director General of Health Services. Facts stated in the affidavit, referred above, were believed by the High Court.

15. In compliance of order dated 08.01.2002, passed by High Court of Delhi. Directorate General of Health Services wrote letter dated 13.09.2004 to the Hospital. It was specified therein that essential qualification for direct recruits, *viz.* (i) 10+2 examination certificate in science subject from recognized Board/University or equivalent, and (ii) diploma in Medical Laboratory Technology, recognized by All India Council of Technical Education or any other authority authorised by the Government, shall apply in the case of promotees also, specially when recruitment rules of the feeder post of Lab. Attendant do not specify any qualification. Medical Superintendent was required to make available hierarchy chart of the division as well as recruitment rules of the feeder post so that mode of recruitment and percentage to be prescribed for the two categories are decided. Prior to letter dated 13.09.2004, letter dated 06.01.2003 was written to the Medical Superintendent, Lady Harding Medical College and Sucheta Kripalani Hospital, calling upon him to make proposal, for amendment of recruitment rules of Lab. Assistant in the said Hospital and its associate Hospitals, to the Directorate within two weeks so that necessary administrative action may be taken to ensure compliance of directions issued by High Court of Delhi. In that letter, reference to the meeting held on 10.04.2001, under the chairmanship of Additional Director General, Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi, was made. In that meeting, following recommendations were made:

(i) Due to advancement in technology and requirement for upgradation of knowledge of

laboratory personnel, Safdarjung Hospital would continue to impart medical laboratory training course in accordance with the requirement of All India Council of Technical Education (AICTE) and get it duly recognized.

(ii) Safdarjung Hospital should take appropriate steps to get the course recognized by AICTE.

(iii) Suitable amendment to the recruitment rules of Lab. Assistant may be recommended to the Ministry of Health and Family Welfare so trial only candidates qualified in Medical Laboratory Technology diploma from recognized institutions approved by AICTE are considered for appointment to the post of Lab. Assistant."

16. The above document highlights that when order Ex. MW 1/2 was passed by High Court of Delhi, Directorate General, Health Services came into action and steps were taken to get Medical Laboratory Training Course, conducted by Safdarjung Hospital, recognized from AICTE and amend the recruitment rules for the post of Lab. Assistant. Essential qualification for direct recruits were provided as (i) 10+2 examination certificate in science subject from recognized Board/University or equivalent, and (ii) diploma in Medical Laboratory Technology, recognized by All India Council of Technical Education or any other authority authorised by the Government. It was also noted that since no qualification has been specified for recruitment to feeder post of Lab. Attendant qualification proposed for direct recruits were to apply in case of promotees also. Thus, It is evident that a decision was taken to the effect that for promotion to the post of Lab. Assistant an incumbent should also possess essential qualification required for direct recruitment to the post.

17. Though efforts were made to amend the recruitment rules, yet the Government has not come out with the actual amendment of rules. As admitted by Shri Hukam Chand, fresh recruitment rules has not yet been notified. It has been brought to the notice of the Tribunal that on 16/18.06.2011, Medical Superintendent wrote to the Deputy Director (Admn.), Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India. New Delhi, transmitting to him the proposed recruitment rules for the post of Lab. Assistant. In that proposal, education Qualification for the post of Lab. Assistant has been specified as: (i) 10+2 examination certificate with science subject from recognized Board/ University, and (ii) minimum 2 year diploma in Medical Laboratory Technology, recognized by Government or any other statutory body. Desirable qualification was specified as B.Sc. in Medical Laboratory Technology. Method of recruitment was proposed to be made by direct recruitment only. This proposal had not been formulated into an action. Government had not amended the rules under proviso to Article 309 of the Constitution, not to talk of its publication in the official gazette. As conceded by Shri Hukam Chand, amended rules are yet to be formulated and notified. When rules have not been amended till date, it cannot be said that proposed amendment would take retrospective effect. Issue is. therefore, answered in favour of the claimant and against the Hospital.

**Issue No.2**

18. Appointment of the claimant to the post of Lab. Assistant with effect from 15.10.2009 is not disputed by Shri Hukam Chand. The said order has been proved as Ex.WW1/5. For sake of convenience, contents of the said order are reproduced thus:

"On the recommendations of Departmental Promotion Committee. Director is pleased to promote the following Lab. Attendant to the post of Lab. Assistant in the pay scale of Rs. 5200-20200 and grade pay of Rs. 2000 with effect from 15.10.2009 on following terms and conditions:

1. Shri Roop Singh

(i) He has to submit his joining report within a week from the date of issuance of the office order.

(ii) His pay will be fixed in the higher grade as per rule."

19. Admittedly, recruitments rules stipulate that for promotion to the post of Lab. Assistant, an incumbent should be: (i) matriculate, and (ii) having three years regular service in the grade as Lab. Attendant. Claimant fulfilled requisite qualification. However, it cannot be lost of sight of that on 08.01.2002 order Ex. MW1/2 is passed by the High Court. In pursuance of the said order, Directorate General of Health Services took steps for amendment of the recruitment rules for the post of Lab. Assistant. Letter dated 13.09.2004, written to the Hospital, makes it apparent that for recruitment to the post of Lab. Assistant, qualification are to be kept as: (i) 10+2 examination certificate in science subject from recognized Board/University or equivalent, and (ii) diploma in Medical Laboratory Technology, recognized by All India Council of Technical Education or any other authority, authorised by the Government. It was specified therein that qualification proposed for direct recruitment shall apply in the case of promotees also specially when recruitment rules for the post of Lab. Attendant do not specify any qualification. Thus, it is evident that in September 2004, Medical Superintendent of the Hospital was well apprised of the order passed by the High Court and steps being taken by the Government for amendment of recruitment rules for the post of Lab. Assistant, ignoring steps taken by the Government as well as order Ex. MW1/2 passed by High Court of Delhi, the Hospital promoted the claimant to the post of Lab. Assistant. Though his promotion was in consonance with the recruitment rules, yet violative of the undertaking given by the Directorate General of Health

Services, Ministry of Health & Family Welfare, Government of India, New Delhi to the High Court. Undertaking given by the Government to court of law binds it. The Medical Superintendent of the Hospital works under supervision and control of Directorate General of Health Services, Ministry of Health & Family Welfare. Government of India, New Delhi, hence cannot evade the undertaking given by the latter. It is evident that promotion of the claimant, though in consonance to the rules, yet was not bonafide, since it tends to stigmatize the Government. Furthermore, process for amendment of the recruitment rules was put in motion for weal of the society so that well qualified health support care staff may be employed. Admittedly, the claimant was neither senior secondary pass nor having diploma in Medical Laboratory Technology. Thus, his promotion, though within the framework of the rules, yet raised issues of propriety and dignity of judicial system. When Hospital came out of its slumber, order dated 01.07.2010 was passed by it. Said order reads as follows:

> "in the order of Hon'ble Court dated 08.01.2002, submitted the proposal to Directorate General of Health Services for amendment of recruitment rules so that only such candidates who qualified in the Medical Laboratory Technology Diploma from recognized institutions approved by All India Council for Technical Education are considered for appointment to the post of Laboratory Assistant, Directorate General of Health Services has also stated in their letter *vide* No. A. 11018/5/2004-RR dated 13.09.2004 that no distinction in this regard can be made with regard to appointment by the method of promotion and direct recruitment. Hence the qualification proposed for direct recruitments shall apply in the case of promotees also especially when the recruitment rules of feeder post of Laboratory Attendant do not specify any qualification. The minimum academic qualification for the post of Laboratory Assistant is to be kept by DGHS is as:
>
> **Essential**
>
> (i) 10+2 Science subject from recognized Board/ University or equivalent.
>
> (ii) Diploma in Medical Laboratory Technology recognized by the AICTE or any other authority authorized by the Government. Since the above qualification would be applicable for promotion also, the relevant provision under Column 9 would be:
>
> Age : No
>
> Educational qualification Should possess a recognized diploma in Medical Laboratory Technology.
>
> To regard and void contempt of Hon'ble Court, Shri Roop Singh is hereby reverted from Lab. Assistant to Lab. Attendant and order No. ASCH/RR/2009-10/ 4301 dated 16.10.2009 stands hereby cancelled with immediate effect.
>
> This issues with the approval of Director".

20. Question to be addressed is as to whether reversion of the claimant to the post of Lab. Attendant amounts to reduction in rank as contemplated by provisions of Article 311(2) of the Constitution? Those provisions are reproduced thus:

> "Article 311 : Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.— (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
> ....."

21. In order to determine whether a particular order of reversion amounts to reduction in rank, it is not only the form or wording of a particular order which is to be treated as conclusive but its substance of the matter which has to be determined after consideration of totality of the circumstances. If the real intention is found to be to penalize or punish the official then notwithstanding the form of me order reversion would be held to amount to reduction in rank. Normally, an order of reversion would be by way of punishment when following circumstances are found to exist: (i) if it is expressed to be so, (ii) if evil consequences ensue from the order as direct result thereof, and (iii) if stigma is caused on the official by order of reversion beyond mere findings of the officer being not suitable for holding higher post. Two fold test for holding the reversion to be punitive is: (i) Whether servant had right to the post or rank, or (ii) Whether he has been visited with evil consequences.

22. As order dated 01.07.2010 spells, the Hospital projects that the High Court of Delhi passed order of 08 01 2002 wherein proposal submitted by Directorate General of Health Services for amendment of recruitment rules was taken into consideration, besides assurances given by the Director General to the effect that only qualified persons in Medical Laboratory Technology diploma, from recognized institution, would be considered to the post of Lab. Assistant. The said order further highlights that in its order dated 13.09.2004, Director General emphasized that no distinction in regard to qualification would be made in the matter of direct recruitment and promotion to the post of Lab. Assistant. Therefore it was stressed that a promotee

should possess a recognized diploma in Medical Laboratory Technology. The Hospital makes it apparent that to comply and avoid contempt of the Court, claimant was reverted to the post of Lab. Assistant. This reversion order makes it apparent that that the claimant was not having diploma in Medical Laboratory Technology hence not qualified to be promoted to the post of Lab. Assistant, in accordance with the qualification which were assured to the put forth for the post. Obviously, reversion order makes it apparent that the claimant was reverted to his substantive post not as a matter of punishment. Neither order of reversion cast any stigma nor evil consequences ensued therefrom.

23. Whether the claimant was entitled to the post of Lab. Assistant? Admittedly, claimant fulfilled qualifications prescribed in the recruitment rules for promotion to the post. But amendment of the recruitment rules was on cards, in persuance of undertaking given by the Directorate General, Health Services to the High Court. The Hospital was well aware of such an undertaking and steps being taken for amendment of the recruitment rules. Claimant was not having diploma in Medical Laboratory Technology, not to talk of it being recognized by AICTE or Government institution or any other statutory body. Thus, it is apparent that recruitment rules were to be modified to upgrade qualifications for recruitment to the post of Lab. Assistant. It was so being done for betterment of the society and to carry out commands given by the High Court. Claimant was promoted in violation of undertaking given by the Directorate General to the Court. Thus, it is apparent that his promotion, being malafide, could not vest him with any right to the post Resultantly, it is concluded that when the claimant was not having any right to the post, his reversion to the post of Lab. Assistant cannot be termed either as punishment or reduction in rank, requiring enquiry in the matter.

24. Claimant was promoted to the post of Lab. Assistant and his pay was fixed in Pay Band I in the scale of Rs. 5200-20200. with grade pay of Rs. 2000. Post of Lab. Attendant and Lab. Assistant are in on Pay Band I in the scale of Rs. 5200-20200. However, grade pay for the post of Lab. Assistant is Rs.1800 and for the post of Lab. Assistant it is Rs. 2000. Claimant admits that in the year 2004, 3rd MACP was given to him and his grade pay was enhanced from Rs. 2000 to Rs. 2400. He further admits that he was getting grade pay of Rs. 2400 with effect from 01.09.2008. Thus, it is emerging over the record that though the claimant has been reverted to the post of Lab. Attendant yet he is not put to any financial loss.

25. In view of the above reasons, I find legality in reversion order passed by the Hospital. Justification to grant indulgence in favour of the claimant has also not emerged since reversion order is neither punitive not puts him to financial loss. Claimant is not entitled to assail the reversion, since his promotion, made by the .Hospital, was in violation to the undertaking given by the Directorate General of Health Services to High Court. In view of these reasons, it is crystal clear that the claimant is not entitled to any relief. His claim statement is, accordingly, discarded. An award is passed in favour of the Hospital. It be sent to the appropriate Government for publication.

Dated: 10.07.2013 DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 718.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर (साउथ), साउथ दिल्ली म्युनिसिपल कारपोरेशन, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 10/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42011/136/2012- आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 718.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No.10/2013) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner (South), South Delhi Municipal Corporation, New Delhi and their workmen, which was received by the Central Government on 28.01.2014.

[No. L-42011/136/2012-IR(DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DELHI**

**I. D. No. 10/2013**

The President
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi-110001. ... .Workman

Versus

The Commissioner (South),
South Delhi Municipal Corporation,
9th Floor, Civic Centre,
Minto Road, New Delhi. ...Management

**AWARD**

Post of carpenter and senior carpenter in Municipal Corporation of Delhi (in short the Corporation) were treated

as semi skilled and skilled posts. An incumbent could join as carpenter at initial level and on promotion, he was to get post of senior carpenter. Post of carpenter carried pay scale of Rs.210-270 while post of senior carpenter was in the pay scale of Rs.260-350. *Vide* office order No.VIII/(l23)/EC/IV/AC(Engg.)/82/213/2052 dated 12.07.1982 pay scale for the post of senior carpenter was revised to Rs.260-400 with effect from 01.01.1973 The Corporation, by way of resolution No.902 dated 05 03.2007, merged post of carpenter and senior carpenter into a post of carpenter in the pay scale of Rs.260-400 (revised to Rs.3050-4590) with effect from 01.01 1996.

2. Shri Abdul Gani joined services of the Corporation as carpenter on muster roll in 1969. His services were regularized as carpenter with effect from 01.04.1976. His pay was fixed by the Corporation in the scale of Rs 210-270, which was revised to Rs 2550-3200. Abdul Gani superannuated on 30.06.1998. After his superannuation, he raised a demand for fixation of his pay in the scale of Rs.260-400, revised to Rs. 3050-4590 with effect from 01.01.1996 His demand was not conceded to by the Corporation. He approached the MCD General Mazdoor Union (in short the union), which union took up his cause for redressal. The union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, the conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-42011/136/20l2/lR(DU), New Delhi, dated 17.12.2013, with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi in not reclassifying Shri Gani Khan, Carpenter as skilled workman and accordingly granting him pay scale, ACP and Pensionery benefits is legal and justified? If not, to what relief the concerned workmen is entitled to?"

3. Claim statement was fifed by Shri Abdul Gani pleading therein that he was initially employed as carpenter on muster roll by the Corporation in 1969. His services were regularized with effect from 01.01.1976. Post of carpenter has been classified as of skilled workman by the Central Pay Commission and categorized as such after implementation of the award given by the Board of Arbitration (JCM). Pay scale of skilled workmen has been revised from 260-350 to Rs.260-400 with effect from 01.01.1973 Corporation issued circular in that regard on 12.07.1982. Despite issuance of said circular, he was paid wages of semi skilled category instead of skilled category. Action of the Corporation is illegal and uncalled for. He was entitled to pay in the pay scale of Rs. 260-400 revised to Rs. 3050-4590 with all consequential benefits. He claims that an award may be passed directing the Corporation to pay his wages in the scale of Rs. 260-400 (revised to Rs. 3050-4590), financial upgradation on rendering 12 years under Assured Career Progression Scheme and pensionery benefits.

4. In the counter, the Corporation projects that at entry level, the claimant joined post of carpenter. In 1976, there were posts of carpenter and senior carpenter and a carpenter could become senior carpenter only on promotion. Post of carpenter carried scale of Rs. 210-270, while post of senior carpenter was in the scale of Rs. 260-400. *Vide* resolution No.902 dated 05.03.2007, the Corporation merged post of carpenter and senior carpenter in the category of carpenter in the pay scale Rs.260-400 (revised to Rs. 3050-4590) with effect from 01.01.1996. Pay of the claimant has been revised in accordance with the aforesaid resolution. He will be given benefit of difference of upgradation of pay, under Assured Career Progression scheme. His arrears would be paid, as per rules.

5. Since the Corporation conceded to the claim presented by Shri Abdul Gani and the latter felt satisfied with grant of pay scale and financial upgradation by Corporation, no evidence was adduced by the parties.

6. Arguments were heard at the bar. Shri B. K. Prasad, authorized representative, advanced arguments on behalf of the claimant Shri Umesh Gupta, authorised representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. In the reference order, the claimant has been named as Gani Khan while in the claim statement, claimant presents his name as Shri Abdul Gani. In written statement the Corporation mentions his name as Abdul Gani. Therefore, out of facts pleaded by the parties, it emerged that name of the claimant is Shri Abdul Gani, who has been wrongly projected as Gani Khan in the reference order. Question for consideration would be as to whether this Tribunal can rectify this mistake. To answer this proposition, scheme of the Industrial Disputes Act, 1947 (in short the Act) is to be taken into account. As emerge out of the scheme of the Act, for referring an industrial dispute for adjudication the appropriate Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an industrial dispute exists or is apprehended. The factual existence of a dispute or its apprehension and expediency of making a reference are matters entirely for the Government to decide. An order making a reference is an administrative act and the fact that the Government has to form an opinion as to the factual

existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The adequacy or sufficiency of material on which opinion was formed is beyond The pale of judicial scrutiny.

8. The scope of a reference is a matter of considerable importance. Although it is open to an industrial adjudicator to devise his own procedure, but he has to confine his adjudication to the points of dispute specified in the order of reference and to matters incidental thereto. Before embarking on adjudication, therefore, the adjudicator has to determine the scope of the order of reference. Hence, the question of the scope and construction of the order of reference becomes relevant. The construction of the order of reference will, in all probability, be easy or difficult, according as the document has been skillfully or carelessly drawn. In India Paper Pulp Company Limited [1949 (I) LLJ.258] the Federal Court was concerned with a proposition as to whether the order of reference can be construed by an adjudicator. Chief Justice Kania, speaking for the Court, said that not infrequently, the orders of reference are "far from satisfactory and are not carefully drafted". It is, therefore, desirable that the appropriate Government should frame such orders carefully and the questions, which are intended to be tried by the adjudicator, should be so worded as to leave no scope for ambiguity or controversy. Same proposition of law was laid by Apex Court in Delhi Cloth and General Mills Limited [1967 (I) LLJ 423]. Inaccuracy of language employed in the order of reference, however, does not always make any difference to the jurisdiction of the Tribunal to proceed with the reference and adjudicate upon it, as the Tribunal can interpret and find out the real meaning of the order of reference, as it stands . A duty is cast upon the Tribunal to make an attempt to construe order of reference to find out as to what was the real dispute which was referred to it and to decide it and not to throw it out on a mere technicality. Law to this effect was laid by the Apex court in Express Newspaper Limited [1962 (II) LLJ 227]. Reference can also be made to the precedent in Management of Barpukhurie Tea Estate [1976 (I) LLJ 558] and Minimax Limited [1968 (I) LLJ 369].

9. When phraseology of order of reference is inelegant, the Tribunal should look to the substance rather than to the form of the order of reference. In construing terms of the order of reference and determining the scope and nature of the points referred, the Tribunal has to look into the order of reference itself. Therefore, it is clear that where the order of reference is vague or cryptic, the tribunal may cull out the real question by construing its phraseology. In C.P. Sarathy [1953(1)LLJ 174] the Apex Court ruled that when order of reference is not clear the Tribunal may crystalise the terms of reference from the statements of the respective cases of the parties. In Delhi Cloth and General Mills Limited (supra) the Apex Court candidly laid that "the Tribunal must, in any event, look to the pleadings of the parties to find the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance, leading to the trouble". From above proposition of law laid it is evident that the Tribunal is competent to construe the terms of reference, when it is vaguely worded and can ascertain the real dispute between the parties even from its pleadings.

10. As detailed above, in the order of reference, claimant has been named as 'Gani Khan' while in the claim statement as well as in the written statement filed by the Corporation, his name has been projected as 'Abdul Gani'. Obviously, claimant has been wrongly named in the order of reference made by the appropriate Government. To reach to the real name of the claimant, Tribunal may look at the pleadings of the parties. As pointed out above, the Tribunal can find out the exact nature of the dispute by making reference to the pleadings of the parties when order of reference is vague or cryptical. Here in the case, order of reference gives wrong name of the claimant, while parties make it apparent that the name of the claimant as 'Abdul Gani'. Taking into consideration law referred above, the Tribunal is of the considered view that it can read real name of the claimant out of pleadings of the parties. Therefore, it is ordered that the reference order is construed out of facts pleaded by the parties and the Tribunal concludes that the dispute referred for adjudication is between Shri Abdul Gani and the Corporation.

11. Claimant presents in hrs claim statement that he joined services of the Corporation as a carpenter on muster roll in 1969. He continuously served the Corporation and his services were regularized as carpenter on 01.04.1976. These facts are not at all deputed by the Corporation. Thus, it is crystal clear that the claimant has rendered service as carpenter on muster roll for a period of 6 years. His services on muster roll was followed by his regularization in the service of the Corporation. Therefore, claimant is to count 50% service rendered on muster roll, which was followed by his regularization in service, for the purpose of retiral benefits, in view of Government of India instructions No. 45-95/87-SPVI dated 12.04.1991. His service rendered as carpenter on muster roll, followed by regularization, for the purpose of retiral benefits comes to 3 years.

12. Corporation presents in its written statement that the claimant was initially engaged in the pay scale of Rs. 210-270, which scale was converted into scale of Rs. 260-400 (revised to scale of Rs. 3050-4590 with effect from

01.01.1996) when post of carpenter and senior carpenter were merged into post of carpenter on the strength of resolution No. 902 dated 05.03 2007. It has further been projected by the Corporation that the claimant would be given difference of Assured Career Progression Scheme after revision of his pay scale. In the light of these admitted facts, financial and retiral benefits of the claimant would be ascertained.

13. Fifth Central Pay Commission recommended introduction of Assured Career Progression Scheme for grant of two financial upgradation to an employee in a service span of 24 years. These recommendations were accepted by the Government and Assured Career Progression Scheme (in short the Scheme) was introduced with effect from 09.08.1999. The Scheme projects that on completion of 12 years of regular service, an employee would be given financial upgradation. Second financial upgradation would be admissible after 12 years of regular service from the date of first financial upgradation. In cases where employee has already completed 24 years of regular service, with or without a promotion, the second upgradation, under the Scheme, shall be granted directly. In other words in respect of employees who have already rendered 24 years of regular service on or before 09 08.1999, and not received any promotion, two upgradations would be given to them on 09. 08.1999. The Scheme has only prospective application, it is not permissible to allow notional benefit with retrospective effect.

14. Claimant, Shri Abdul Gani, superannuated on 30.09.1999, after rendering more than 22 years of regular service. On the date of his superannuation, the Scheme was not in operation. Since the Scheme has no retrospective operation, notional benefit of the Scheme cannot be granted to him with retrospective effect. Resultantly, it is concluded that benefit of the Scheme for grant of financial upgradation cannot be accorded to the claimant.

15. Corporation projects that posts of carpenter and senior carpenter were merged with the post of carpenter in the pay scale of Rs. 260-400 (revised to Rs. 3050-4590 with effect from 01.01.1996) *vide* resolution No. 902 dated 05.03 2007, with effect from 01 01.1996. In the light of this proposition, it is evident that claimant is entitled for grant of his pay in the pay scale of Rs. 3050-4590 with effect from 01.01.1996 As emerged out of copy of his service book, was at Rs. 1110.00 on 01.04.1996. On that date, claimant is entitled to basic pay of Rs. 3440 in the pay scale of Rs. 3050-4590. His basic pay would reach to Rs. 3650.00 on 01.07.1998. The Corporation is, therefore, commanded to refix his pay accordingly and release arrears at the earliest.

16. For pensionery benefits, claimant has rendered qualifying service of 22 years, besides 3 years (50% of service rendered as muster roll employee) service prior to his regularization. Thus, his qualifying service for the purpose of pension comes to 25 years. Calculating his pension, the Tribunal concludes that he is entitled to pension of Rs.1383 per month. The Corporation shall fix his pension accordingly and release arrears to him.

17. For death-cum-retirement gratuity, he has rendered 25 years of service. Calculating his gratuity on that standard, it is apparent that the claimant is entitled to gratuity of Rs. 55,663.00. The Corporation shall accordingly release gratuity in his favour and grant difference of gratuity amount to him.

18. In view of the above reasons, claimant is entitled for re-fixation of his pay, release of pension at revised rate and grant of difference of death-cum-retirement gratuity, as calculated above. The Corporation shall release arrears of wages, difference of pension as well as gratuity amount within 30 days from the date this award becomes operative. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Date: 11.10.2013

R. K. YADAV, Presiding Officer

नई दिल्ली, 4 फरवरी, 2014

**का॰आ॰ 719.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लि., सवाई माधोपुर के प्रबंधतत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 37/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/76/2009-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th February, 2014

**S.O. 719.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 37/2009) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited, Sawai Madhopur and their workman, which was received by the Central Government on 28/01/2014.

[No. L-40012/76/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXRUE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LAB OUR COURT, JAIPUR**

N.K. PUROHIT, Presiding Officer

**I.D. 37/2009**

Reference No. L-40012/76/2009-IR(DU) Dated: 4.11.2009

Smt. Uganti
W/o Shir Hazari Raigar,
Village Mirzapur, Tehsil-Gangapur City,
Sawai Madhopur (Rajasthan)

*V/s.*

The Sub-Divisional Engineer (Telephone)
M/s. Bharat Sanchar Nigam Limited,
Gangapur City, Sawai Madhopur (Raj.)

**PRESENT:**

For the applicant : Sh. M. F. Beig.

For the non-applicant : Sh. B. L. Ahir.

**AWARD**

Dated: 23.5.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

> "Whether the action of the management of Sub-Divisional Engineer (Telephone), BSNL, in terminating the services of Smt. Uganti *w.e.f.* 31/8/2000 is legal & justified? If not, what relief the workman is entitled to?"

2. The workman has pleaded in her statement of claim that she was employed by the non-applicant as daily wager class IV safai karamchari on 1.9.99 but her services were terminated on 31.8.2000 without assigning any reason. She has further pleaded that she had worked for more than 240 days during preceding 12 months from the date of termination, therefore, her termination without any notice, notice pay or compensation was in violation of section 25-F of the I.D. Act. She has alleged that no seniority list was prepared before terminating her services & non-applicant has also violated the provisions of section 25-G of the ID. Act. The workman has also pleaded that the non-applicant did not pay the salary for the period September, 1999 to Aug. 2000. The Authority under Payment of Wages Act directed the non-applicant to pay the due salary & compensation to the workman. The appeal against the said order filed by the non-applicant was rejected. Thus, the workman has prayed for her reinstatement with back wages & other consequential benefits.

3. In reply, the non-applicant has denied the claim of the workman. It has been averred that the applicant was never employed as daily wager class IV employee. She had not worked under the employment of the non- applicant; therefore, question does not arise for violation of provisions of section 25-F & 25-G. It has also been averred that the Authority under Payment of Wages has not considered the documents produced by the non-applicant & appeal against the order of Authority under Payment of Wages Act has been filed by the non-applicant.

4. In rejoinder, the applicant has stated that order passed by the Authority under Payment of Wages Act has attained the finality.

5. In evidence, the workman has filed her affidavit. In rebuttal, the non-applicant has filed the affidavits of Sh. B. K. Sharma MW1, Sh. Ramswaroop Mali MW2, Smt. Mangi Bai MW3, Sh. Sumrat Lal Meena MW4 & Sh. Suresh Chand Gupta MW5. Affidavit of Sh. Nanak Chand Goyal was also filed but he has not appeared for cross-examination, therefore, his affidavit cannot be considered in evidence.

6. I have considered the written submission submitted on behalf of both the parties & have gone through the record.

7. The workman has filed documents Ex. W-1 & Ex. W-2 whereas the non-applicant has produced documents Ex. R-1 to R-5.

8. In view of the rival pleadings of the parties, the questions crop-up for consideration are as below:—

I. Whether the workman has worked as daily wager safai karamchari for more than 240 days during period 1.9.99 to 30.8.2000 whose services were terminated on 31.8.2000 in violation of section 25-F of the l.D. Act?

II. Whether non-applicant terminated the services of the applicant in violation of the section 25-G of the I.D. Act?

III. Relief.

**Point No. I**

9. The initial burden was on the workman to prove that he had remained under the employment of the non-applicant as a workman for a continuous period of at least one year as envisaged u/s 25-F of the I.D. Act, therefore, his termination without notice or compensation in lieu of notice was in violation of the said section.

10. The workman has stated that she was appointed by the non-applicant as daily wager safai karamchari on

1.9.99. She has further stated that despite she had worked for more than 240 days, her services were terminated on 31.8.2000 without any notice, notice pay or compensation. In support of her statement she has filed documents Ex. W-1 & Ex. W-2.

11. In rebuttal, Sh. B.K. Sharma, D.E., MW2, Sh. Sumrat Lal Meena, S.D.E. MW4 & Sh. Suresh Chand Gupta, Cash Counter, MW5 have stated that the workman was not employed by the non-applicant & she had not worked as daily wager safai karamchari. They have also stated that the work of cleaning was being performed by Smt. Mangi Bai & the work of filling & serving water was being done by Sh. Ramswaroop Mali.

12. Sh. Ramswaroop Mali has stated that he had performed the work of filling water & serving water for about 25 years in the non-applicant Department at Gangapur City. Smt. Mangi Bai MW3 has also stated that the job of safai was being performed by her. Both the witnesses have stated that the workman had not worked under the non-applicant as safai karamchari during period Sep. 99 to Aug. 2000.

13. The Id. Representative for the workman submits that the statement of the workman that she had worked as daily wager safai karamchari for more than 240 days finds corroboration from the documents Ex-w-1 & Ex-w-2. The order dated 25.7.2001 Ex-w-1 & decision dated 2.12.2008 Ex-w-2 have attained the finality & above decision are binding on the parties. He further submits that since the workman had worked for more than 240 days during preceding 12 months from the date of her termination, her termination without complying with the provisions of section 25-F of the l.D. Act, is illegal.

14. Per contra, the Id. Representative for the non-applicant submits that the documents of the non-applicants were not considered in order Ex-w-1 & it has not attained finality. He further submits that from statement of the management witnesses & documentary evidence adduced by the non-applicant it is proved that the workman had not worked under the employment of the non-applicant. He also submits that it was for the workman to prove that she had actually worked for more than 240 days during preceding 12 months from the date of alleged termination but she has failed to prove above facts, therefore, provisions of section 25-F of the I.D. Act are not attracted.

15. I have given my thoughtful consideration to the rival submissions of the parties.

16. It is not in dispute that a claim PWA 21/2000 was filed by the applicant before the Authority under Payment of Wages Act, Sawai Madhopur for her due wages for the period Sep. 1999 to Aug. 2000 & compensation for the non-payment of the wages for the said period. Admittedly, *vide* order dated 25.7.2001 Ex-w-2, directions were given to the non-applicant for payment of due wages of the workman for the said period. It is also not in dispute that appeal against the said order was dismissed vide decision dated 2.12.2008 Ex-w-1. The management witness Sh. Sumrat Lal Meena has admitted that the appeal no. 1909/09 against the decision of the ADJ, Fast Track, Sawai Madhopur, was also dismissed.

17. The management has produced documents Ex-R-1 to R-5. Ex-R-1/1 to 8 are payment bills of the part time worker. Ex-R-2 is a letter dated 25.8.2000 regarding conversion of part time casual labourers working for less than four hours per day into full time casual labourers. Ex-R-3 is the copy of notification regarding change of telephone numbers, Ex-R-5 is notification published in newspaper dated 30.3.2000.

18. Document Ex-R-2 to Ex-R-5 are not relevant for the point under consideration. Ex-R-1/1 to Ex-R-1/8 are payment bills of part time workers which show that management witnesses Sh. Ramswaroop Mali & Smt. Mangi Bai were working as part time Paniwala & Safaiwala respectively during period Sep, 1999 to Aug, 2000.

19. The workman has stated that she had worked as daily wager safai karamchari from Sep, 1999 to Aug, 2000 & her services were terminated on 31.8.2000 without any notice or notice pay or compensation. Ex-w-2 order dated 25.7.2001 reveals that a claim for payment of wages for the period Sep. 1999 to Aug. 2000 was filed before the Authority under Payment of Wages Act, Sawai Madhopur & while allowing her claim directions were given to the non-applicant to pay an amount of Rs,15600/- as due wages for the said period & an amount of Rs.15600/- as compensation. As per order total amount Rs.31200/- was to be paid to the workman within 30 days from the date of order. Ex-w-1 reveals that the Civil Misc. appeal no. 58/2008 against the order of the Authority under Payment of Wages Act was dismissed by the court of ADJ (F.T.), Sawai Madhopur *vide* decision dated 2.12.2008. From the statement of the management witness Sh. S.L. Meena it further reveals that an appeal against the decision Ex-w-1 dated 2.12.2008 filed before the Hon'ble High Court was also dismissed. The management witness has stated that against the said order of the Single Bench an appeal was filed but he was unable to state whether that appeal was disposed of or pending. The management has not filed any document in this regard. Upon perusal of the record it also reveals that the workman has submitted an application along with photo state copy of the cheque for an amount of Rs.31200/- issued in his favour by the non-applicant. Under these circumstances, the contention of the Id. Representative for the non-applicant that order of the Authority under Payment of Wages Act has not attained finality is not sustainable. Since, the order of the Authority

under Payment of Wages Act has attained finality the contention of the Id. Representative for the non-applicant that the Authority under Payment of Wages Act has not considered the documents produced by the non-applicant is also not tenable.

20. The order Ex. w-2 of the Authority under Payment of Wages Act has been upheld by the court of ADJ(F.T.), Sawai Madhopur *vide* decision Exw-1. The management witness Sh. S.L.Meena has admitted this fact that appeal no. 1909/09 against the decision Exw-1 has also been rejected by Hon'ble High Court. Thus, it is evident that claim of the workman for a due wages for the period Sep. 1999 to Aug. 2000 has been allowed in the aforesaid decisions & findings in the decisions supra substantiate the statement of the workman that she had worked under the employment of the non-applicant during said period. In view of the order of the Authority under Payment of Wages Act which have been confirmed in appeal & has attained finality, the statements of the management witnesses that the workman had never worked under the employment of the non-applicant is not acceptable,

21. Since, the workman has established that she had worked as daily wager for more than 240 days during preceding 12 months from the date of her termination *i.e.* 31.8.2000 & admittedly, the non-applicant has not given any notice, notice pay or compensation to the workman, the termination of the workman was in violation of section 25-F of the l.D. Act, Accordingly, this point is decided in favour of the workman.

**Point No. II**

22. The workman has alleged that her termination was in violation of section 25-G of the I.D. Act but in this regard neither there is any pleadings nor any evidence that while terminating her services any junior person to her was retained in the job. Thus, the workman has failed to prove any violation of section 25-G of the I.D. Act. This point is decided against the workman.

**Point No. III**

23. Since, Point no. I has been decided in favour of the workman, therefore, it is to be considered what relief should be given to the workman.

24. This legal position is not in dispute that in case of non compliance of section 25-F the workman can be reinstated with other consequential reliefs. In case law referred to by the learned representative the question as to whether in case of violation of section 25-F an award of reinstatement should be automatically passed was not under consideration.

25. Earlier in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

26. In recent decision (2010) 1 SCC (L&S) 545 Jagbir Singh *V/s* Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D. Act Hon'ble Apex Court has observed that:—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of re-instatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

27. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:—

> "While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour court can award compensation."

> "There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination or service being

found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

28. In present matter, the workman has worked as daily wager safai karamchari. She was not holding any regular post. Keeping in view the nature of job & nature of employment, the inordinate delay in raising the dispute, the laps of time after termination of the services, the total length of service rendered by the claimant & having regard the entire facts & circumstances of the case, instead of reinstating the interest of justice will be sub served by paying compensation of Rs. 20,000/- only to the workman instead & in lieu of relief of reinstatement in service.

29. Accordingly, the reference is answered in favour of the workman & it is held that the action of the management in termination of the services of the workman being in violation of section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs.20,000/- (Twenty Thousand Only) instead and in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

30. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 5 फरवरी, 2014

**का॰आ॰ 720.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेशन कमांडर, वायु सेना, एंड ऑथर्स, **जोधपुर** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, **जयपुर** के पंचाट (संदर्भ संख्या 69/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-14011/02/2004-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

**S.O. 720.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No 69/2004) of the Central Government Industrial Tribunal/Labour Court, **Jaipur** now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Station Commander, Vayu Sena & Others, **Jodhpur** and their workman, which was received by the Central Government on 31/01/2014

[No. L-14011/02/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

Sh. N.K.PUROHIT, Presiding Officer,

I.D.69/2004

Reference No.L-14011/2/2004 [(IR(DU)] dated: 8.11.2004

Shri Sohan Lal
S/o Sh. Shyam Lal
House No.143, Opp. Petrol Pump,
Navdurga Nagar, Jhalamand, Pali Road, Jodhpur.

*V/s*

1. The Station Commander 32 Wing, Vayu Sena, Jodhpur.
2. The Senior Education Officer Air Force Station, Jodhpur.

**AWARD**

**26.6.2013**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 and 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Sr. Education Officer, Air Force Station, Jodhpur under Station Commandant, 32 Wing, Air Force, Jodhpur in dismissing the workman Sh. Sohan Lal S/o Sh. Shyam Lal, School Bus Assistant *w.e.f.* 18.12.97 and not giving the benefits on completion of service is just & legal? If not, to what relief the workman is entitled to ?"

2. The workman has pleaded in his statement of claim that he was engaged by the non-applicant as School Bus Assistant on 25.6.1991 and he had worked as such during period 25.6.91 to 18.12.97 but despite he had worked continuously during said period, his services were orally terminated on 18.12.97 without complying with the provisions of section 25-F of the I.D.Act. He has further pleaded that while terminating his services junior to him was retained in the job in violation of section 25-G of the I.D.Act and after terminating his services, new hand was given recruitment without complying with the provisions of the section 25-H of the I.D.Act. Thus, the workman has prayed for his reinstatement with back wages and other consequential benefits.

3. The non-applicant in its reply has denied the claim of the workman. It has been averred that the Govt.

Of India *vide* Air Force instructions has made provisions of service transport for the school going children of defence personnel. There is no provision in the said A.F.I. for engaging bus conductor/attendant out of public fund. On request of the parents of the school going children to engage bus attendant for safety of their wards bus conductor/attendant have been engaged as contingent worker. Their duties are part time and only on school working days.

4. The non-applicants have averred that the workman started working as bus attendant *w.e.f.* 21.6.91 and his services were for two hours in the morning and two hours in the afternoon except for holidays/ school vacation period. The non-applicants have further stated that on 18.12.97 the workman came and threw his temporary pass issued to him and went away refusing to do duties as bus attendant.

5. It has further been averred that the workman was engaged as contingent worker for a fixed amount; that he was not selected through any due process of selection under the Government Rules and Regulations; that the service of the workman was not terminated, he had left the job at his own; that he was a casual labour paid out of the money collected from the parents of the school going children using bus service and no government budget for the purpose was allocated.

6. In evidence, the workman has filed his affidavit and documents Exw-1 to Exw-3. In rebuttal, the non-applicants have filed the counter affidavit of Sh. S.A. Srivalsan, Wing Commander and has also filed copy of Air Force Instructions (A.F.I.) and copy of record of payment paid to the workman.

7. Heard the arguments advanced by the I.D. Representatives on behalf of both the parties and perused the record.

8. Following points crop-up for consideration:

(i) Whether the workman has worked continuously during period 25.6.91 to 18.12.97 whose services were terminated on 18.12.97 in violation of section 25-F of the I.D.Act?

(ii) Whether at the time of terminating the serives of the workman, junior to him was retained in violation of section 25-G of the I.D.Act?

(iii) Whether after terminating the services of the workman, new hand was given recruitment in violation of the section 25-H of the I.D.Act?

(iv) To what relief the workman is entitled to.

**Point No. I**

9. To attract the provision of section 25-F of I.D.Act one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year.

10. The expression "continuous period" occur in section 25-F has been defined in section 25-B of the I.D.Act. Under sub-section (1) of the section 25-B, if a workman has put in uninterrupted service of establishment including the service which may interrupted on account of sickness, authorize leave, accident, a strike which is not illegal, a lock out or secession of work that is not due to any fault on the part of the workman shall be said to be continuous service for one year *i.e.* 12 months in respect of number of days he has actually worked with interrupted service permissible under sub-section (1) of section 25-B.

11. Sub-section 2 of section 25-B of the I.D. Act says that even if a workman has not been in continuous service for a period of one year as envisaged under sub-section (1) of 25-B of I.D.Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year.

12. In the background of the legal provisions set forth above, factual scenario in the present case is to be examined.

13. The initial burden was on the workman to prove that he had remained under the employment of the non-applicant as a workman for a continuous period of at least one year as envisaged u/s 25-F of the I.D.Act therefore, his termination without notice or compensation in lieu of notice was in violation of the said section.

14. The workman has stated that he was engaged as school bus assistant on 1.7.88 and he had worked as school bus assistant during period 1.7.88 to 24.6.98 but despite he had worked for more than 240 days in a calendar year, his services were orally terminated on 24.6.98 without complying with the provisions of the 25-F of the I.D.Act.

15. The workman has submitted documents Exw-1 to Exw-3 in support of his statement. Exw-1 is copy of temporary pass issued to the workman. Exw-2 and Exw-3 are certificates given by Officer In-charge Civil Administration and Warrant Officer respectively.

16. The management witness Wing Commander Sh. S.A. Srivalsan has admitted in his cross examination that temporary pass Exw-1 was issued for entry in the technical area which was to be renewed monthly. He has also admitted that certificate Exw-2 and Exw-3 were issued by the officers of the department but he has stated that they were not authorised to issue such certificates.

17. The non-applicant has produced the statement ExM-1 regarding payment of wages to the workman. Upon perusal of the record produced by the non-applicants in this regard, it reveals that the record pertaining to year 1991 to 1996 has not been produced & it has been stated that the record for the said period has been destroyed as per policy of I.A.F. 3503. However. the record pertaining to year 1997 has been produced according to which details of payment to the workman are as below:—

| Month | Amount | Payment On |
|---|---|---|
| Jan., 97 | 650/- | 31.1.97 |
| Feb., 97 | 650/- | 20.2.97 |
| March, 97 | 650/- | 31.3.97 |
| April, 97 | 650/- | 3.5.97 |
| May, 97 | - | wages not paid due |
| June, 97 | - | to summer vacation. |
| July, 97 | 800/- | 5.8.97 |
| Aug., 97 | 800/- | 29.8.97 |
| Sep., 97 | 800/- | 30.9.97 |
| Oct., 97 | 800/- | 29.10.97 |
| Nov., 97 | 533/- | 18.12.97 |

18. The management witness has stated in his statement that on 18.12.97 the workman absented himself from the job. Thus, impliedly he has admitted that till 18.12.97 the the workman was working as school bus attendant.

19. It is not in dispute that the workman had worked as school bus attendant during period 25.6.91 to 18.12.97. As per the record produced by the non-applicants for the period Jan., 97 to Dec., 97 the workman had worked as school bus assistant during said period except the period of two months of summer vacation. Thus, the statement of the workman finds support from the evidence of the management that during preceding 12 months from the date of his termination *i.e.* 18.12.97, he had worked for more than 240 days.

20. The I.D. Representative for the workman contends that since, the workman had worked for more than 240 days during preceding 12 months from the date of termination, his termination without complying with the mandatory provisions of section 25-F of the I.D. Act is illegal & unjustified. He further contends that part time workers also fall within the ambit of definition of the 'workman' u/s 2-(s) of the I.D. Act. He also contends that the workman was engaged by the non-applicant to work as school bus attendant & wages were paid to him by the non-applicants, therefore, the workman was an employee of the non-applicants.

21. Per contra, the I.D. Representative for the non-applicants submits that on the request of the parents of the school going children, who agreed to contribute towards payment of wages, school bus attendant were engaged. He also submits that there is no provision in this regard in the Air Force Instructions (A.F.I.) & there was no budget allocation for this purpose. He also submits that the workman was not an employee of the non-applicant & his services were not terminated. The workman had left the job at his own, therefore, provisions of section 25-F are not attracts.

22. I have considered the submissions made by the I.D. Representatives for both the sides.

23. Admittedly, the workman was working as school bus attendant. Even, if the contentions of the non-applicants is accepted that his services were for two hours in the morning & for two hours in the afternoon, he was workman within the definition of workman u/s 2-(s) of the I.D. Act. It is not the case of the non-applicants that the workman was directly paid by the parents of the school going children for safety of their wards. The workman was engaged by the non-applicants & as per record payment was being made by the non-applicants. It is immaterial whether the payment was made by the non-applicants from public fund or non-public fund.

24. The workman has stated that his services were orally terminated on 18.12.97. In his statement he had denied that he had left the job at his own. Admittedly, the workman was working as school bus attendant since 1991 & he was on the job till 18.12.97. After raising the dispute regarding his alleged termination on 18.12.97, he is still contesting the case. Under these circumstances, the version of the non-applicants that the workman had left the job at his own accord is not believable.

25. In view of aforesaid discussions, the workman has succeeded in establishing that he had worked for more than 240 days during preceding 12 months from the date of his termination on 18.12.97. Amittedly, no notice or compensation in lieu of notice was paid to the workman, therefore, the termination of the workman was in violation of section 25-F of the I.D. Act. Accordingly, this point is decided in favour of the workman.

**Point No. II**

26. The workman has stated in his claim statement that at the time of termination his services, junior to him was retained in the job but no such name has neither been

disclosed by him in his claim statement nor in his affidavit. He has not produced any documentary evidence in support of his statement in this regard. Therefore, neither he could be able to adduce the sufficient evidence on this point to corroborate his testimony nor his own testimony is definite on this point as such he has failed to discharge to the onus of this point, which is decided against him.

**Point No. III**

27. The workman nowhere narrated in his claim statement the name of the person who was given recruitment after termination of his services. Except his own statement that after terminating his services new hand was given recruitment, nothing has been brought on record to substantiate his statement in this regard. As such, except his bald statement, there is no evidence on this point & in absence thereof, it is decided against the workman.

**Relief**

28. The learned representative on behalf of the workman has submitted that termination of the workman is in violation of the section 25-F of the I.D. Act therefore, the workman be reinstated with all consequential benefits.

29. This legal position is not in dispute that in case of non compliance of section 25-F, the workman can be reinstated with other consequential reliefs.

30. Earlier, in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

31. In recent decision (2010) 1 SCC (L&S) 545 Jagbir Singh *V/s.* Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D. Act Hon'ble Apex Court has observed that:—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wage in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

32. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:—

> "While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation."
>
> "There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

33. In present matter, the workman has worked as school bus attendant & was getting Rs. 800/-p.m. as wages. He was not holding any regular post. Keeping in view the nature of job & nature of employment, the laps of time after termination of the services, the delay in raising the dispute, amount of wages being paid to him, the total length of service rendered by the claimant & having regard the entire facts & circumstances of the case, instead of reinstating him the interest of justice will be sub served by paying compensation to the workman instead & in lieu of relief of reinstatement in service.

34. Accordingly, the reference is answered in favour of the workman & it is held that the action of the management in termination of the services of the workman being in violation of section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs. 25,000/-(Twenty Five Thousand Only) instead & in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

35. Award as above.

N.K.PUROHIT, Presiding Officer

नई दिल्ली, 5 फरवरी, 2014

**का॰आ॰ 721.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेशन कमांडर, वायु सेना, एंड ऑथर्स, जोधपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-14011/03/2004-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

**S.O. 721.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 28/2006) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Station Commander, Vayu Sena & Others, Jodhpur and their workman, which was received by the Central Government on 31/01/2014

[No. L-14011/03/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

SH. N.K. PUROHIT, Presiding Officer

I.D. 28/2006

Reference No.L-14011/3/2004 [IR(DU)] dated: 27.10.2004

Shri Payrelal
S/o Sh. Baldev Ram
R/o Opp. Ship House
Sargara Colony, Jodhpur.

*V/s.*

1. The Station Commander
   32 Wing, Vayu Sena,
   Jodhpur.
2. The Senior Education Officer
   Air Force Station, Jodhpur.

**AWARD**

26.6.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 &2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

> "Whether the action of the management of Senior Education Officer, Air Force Station, under Station Commander, 32 Wing, Air Force, Jodhpur in dismissing the services of Sh. Payre Lal S/o Sh. Baldev Ram. School Bus Assistant *w.e.f.* 24.6.98 and not granting benefits on completion of service is just & legal? If not, to what relief the workman is entitled to?"

2. The workman has pleaded in his statement of claim that he was engaged by the non-applicant as School Bus Assistant on 1.7.1988 & he had worked as such during period 1.7.88 to 24.6.98 but despite he had worked continuously during said period, his service were orally terminated on 24.6.98 without complying with the provisions of section 25-F of the I.D.Act. He has further pleaded that while terminating his services junior to him was retained in the job in violation of section 25-G of the I.D. Act & after terminating his services, new hand was given recuritment without complying with the provisions of the section 25-H of the I.D.Act. Thus, the workman has prayed for his reinstatement with back wages & other consequential benefits.

3. The non-applicant in its reply has denied the claim of the workman. It has been averred that the Govt. of India *vide* Air Force instructions has made provisions of service transport for the school going children of defence personnel. There is no provision in the said A.F.I. for engaging bus conductor/attendant out of the public fund. On request of the parents of the school going children to engaged bus attendant for safety of their wards bus conductor/attendant have been engaged as contingent worker. Their duties are part time & only on school working days.

4. The non-applicants have averred that the workman started working as bus attendant *w.e.f.* 1.7.1988 & his services were for two hours in the morning & two hours in the afternoon except for holidays/school vacation period. The non-applicants have further stated that on 24.6.1998 the workman came & threw his temporary pass issued to him & went away refusing to do duties as bus attendant. It has also been averred that registered letters dated 27.10.98 & 2.11.98 were sent to the workman requesting him to join duties but despite this he did not join his duties.

5. It has further been averred that the workman was engaged as contingent worker for a fixed amount; that he was not selected through any due process of selection under the Government Rules & Regulations; that the service of the workman was not terminated, he had left the job at his own; that he was a casual labour paid out of the money collected from the parents of the school going children using bus service & no government budget for the purpose was allocated.

6. In evidence, the workman has filed his affidavit & documents Exw-1 to Exw-10. In rebuttal, the non-applications have filed the counter affidavit of Sh. S.A. Srivalsan, Wing Commander.

7. Heard the arguments advanced by the Ld. Representatives on behalf of both the parties and perused the record.

8. Following points crop-up for consideration:—

(i) Whether the workman has worked continuously during period 1.7.88 to 24.6.98 whose services were terminated on 24.6.98 in violation of section 25-F of the I.D. Act?

(ii) Whether at the time of terminating the services of the workman, junior to him was retained in violation of section 25-G of the I.D. Act?

(iii) Whether after terminating the services of the workman, new hand was given recruitment in violation of the section 25-H of the I.D. Act?

(iv) To what relief the workman is entitled to.

**Point No. I**

9. To attract the provision of section 25-F of I.D. Act one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year.

10. The expression "continuous period" occur in section 25-F has been defined in section 25-B of the I.D. Act. Under sub-section (1) of the section 25-B, if a workman has put in uninterrupted service of establishment including the service which may interrupted on account of sickness, authorize leave, accident, a strike which is not illegal, a lock out or secession of work that is not due to any fault on the part of the workman shall be said to be continuous service for one year *i.e.* 12 months in respect of number of days he has actually worked with interrupted service permissible under subsection (1) of section 25-B.

11. Sub-section 2 of section 25-B of the I.D. Act says that even if a workman has not been in continuous service for a period of one year as envisaged under sub-section (1) of 25-B of I.D. Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year.

12. In the background of the legal provisions set forth above, factual scenario in the present case is to be examined.

13. The initial burden was on the workman to prove that he had remained under the employment of the non-applicant as a workman for a continuous period of at least one year as envisaged u/s 25-F of the I.D. Act therefore, his termination without notice or compensation in lieu of notice was in violation of the said section.

14. The workman has stated that he was engaged as school bus assistant on 1.7.88 and he had worked as school bus assistant during period 1.7.88 to 24.6.98 but despite he had worked for more than 240 days in a calendar year, his services were orally terminated on 24.6.98 without complying with the provisions of the 25-F of the I.D. Act.

15. The workman has submitted documents Exw-1 to Ex w-10 in support of his statement. Ex w-1, Ex w-2 and Ex w-3 are photocopies of the certificate issued by the Warrant Officer, Squadron Leader and Education Officer respectively which reveals that he was working in station education section since July, 1988. Ex w-4 is letter dated 7.5.90 of the Wing Commander whereby workman was informed that "school will remain closed till 24.6.90, therefore, services are terminated *w.e.f.* 7.5.90 and he will be considered for re-employment after re-opening of the school on 22.6.90." Exw-5 is photocopy of temporary pass issued to the workman which reveals that he had worked during years 1991 to 1998. Ex w-6 is termination letter whereby services were terminated *w.e.f.* 5.5.91 due to summer vacation and it was mentioned that "he can be re-considered for re-employment during next academic session. Ex w-7 and Ex w-8 are letters addressed to the workman dated 3.9.98 and 27.10.98 requesting to join duties. Ex w-9 is a letter of the workman dated 5.11.98 regarding reporting on duty. Ex w-10 is letter dated 2.11.98 addressed to the workman by the Flight Lieutenant for reporting on duty.

16. The management witness Wing Commander Sh. S.A. Srivalsan has admitted in his cross examination that certificates Ex w-1 to Ex w-4 were issued by the officer of the department but he has stated that they were not authorised to issue such certificates. The certificates have been given by them in their personal capacity. He has also admitted that temporary pass Ex w-5 was issued to the workman which was to be renewed monthly. He has also admitted that Ex w-7, Ex w-8 and Ex w-10 letter were issued to the workman but he has stated that letter Ex w-9 of the workman was not received to the department.

17. The non-applicant has produced the statement Ex D-3 regarding payment of wages to the workman. It has been mentioned in the said statement that as per policy of the I.A.F. 3503 the record pertaining to the workman for the period 1991 to 1996 had been destroyed. The non-applicant has mentioned the details of the amount paid to the workman for the period Jan., 97 to April, 98. On perusal of the Ex D-3, it reveals that due to summer vacation, working days of the workman in the month of May 86 June were 1 to 5 May and 23 to 30 June and for that an amount of Rs. 278/- was paid on 3.7.97. For remaining months an amount of Rs. 800/- was paid during period Jan., 97 to April, 98.

18. The management witness has stated in his statement that on 24.6.98 the workman absented himself from the job. Thus, impliedly he has admitted that till 24.6.98 the workman was working as school bus attendant.

19. It is not in dispute that the workman had worked as school bus attendant during period 1.7.88 to 24.6.98. As per the record produced by the non-applicants during period Jan., 97 to April, 98, the workman had worked during

the months Jan., 97 to April, 97 and July, 97 to April, 98 and months of May and June he had worked for 5 days and 8 days respectively. Thus, the statement of the workman finds support from the evidence of the management that during preceding 12 months from the date of his termination i.e. 24.6.98, he had worked for more than 240 days.

20. The Ld. Representative for the workman contends that since, the workman had worked for more than 240 days during preceding 12 months from the date of termination, his termination without complying with the mandatory provisions of section 25-F of the I.D. Act is illegal and unjustified. He further contends that part time workers also fall within the ambit of definition of the 'workman' u/ s 2-(s) of the I.D. Act. He also contends that the workman was engaged by the non-applicant to work as school bus attendant and wages were paid to him by the non-applicants, therefore, the workman was an employee of the non-applicants.

21. Per contra, the Ld. Representative for the non-applicants submits that on the request of the parents of the school going children, who agreed to contribute towards payment of wages school bus attendant were engaged. He also submits that there is no provision in this regard in the Air Force Instructions (A.F.I.) and there was no budget allocation for this purpose. He also submits that the workman was not an employee of the non-applicant and his services were not terminated. The workman had left the job on his own, therefore, provisions of section 25-F are not attracts.

22. I have considered the submissions made by the Ld. Representatives for both the sides.

23. Admittedly, the workman was working as school bus attendant. Even if, the contentions of the non-applicants is accepted that his services were for two hours in the morning and for two hours in the afternoon, he was workman within the definition of workman u/ s 2-(s) of the I.D. Act. It is not the case of the non-applicants that the workman was directly paid by the parents of the school going children for safety of their wards. The workman was engaged by the non-applicants and as per record payment was being made by the non-applicants. It is immaterial whether the payment was made by the non-applicants from public fund or non-public fund.

24. The workman has stated that his services were orally terminated on 24.6.98. In his statement he had denied that he had left the job on his own. The management has produced copies of letters dated 27.10.98 and 2.11.98 and it has been contended that vide above letters request was made to the workman to join duties. It appears that after termination of the workman on 24.6.98 the above letters were sent after four months just to create evidence that the workman had left the job at his own. Therefore, the contention of the Ld. Representative on behalf of the non-applicants in this regard is not sustainable.

25. In view of aforesaid discussions, the workman has succeeded in establishing that he had worked for more than 240 days during preceding 12 months from the date of his termination on 24.6.98. Admittedly, no notice or compensation in lieu of notice was paid to the workman, therefore, the termination of the workman was in violation of section 25-F of the I.D.Act. Accordingly, this point is decided in favour of the workman.

**Point No. II**

26. The workman has stated in his claim statement that at the time of termination his services junior to him was retained in the job but no such name has neither been disclosed by him in his claim statement nor in his affidavit. He has not produced any documentay evidence in support of his statement in this regard, therefore, neither he could be able to adduce the sufficient evidence on this point to corroborate his testimony nor his own testimony is definite on this point as such he has failed to discharge to the onus of this point, which is decided against him.

**Point No. III**

27. The workman nowhere narrated in his claim statement the name of the person who was given recruitment after termination of his services. Except his own statement that after terminating his services new hand was given recruitment, nothing has been brought on record to substantiate his statement in this regard. As such, except his bald statement, there is no evidence on this point and in absence thereof, it is decided against the workman.

**Relief**

28. The learned representative on behalf of the workman has submitted that termination of the workman is in violation of the section 25-F of the I.D. Act therefore, the workman be reinstated with all consequential benefits.

29. This legal position is not in dispute that in case of non-compliance of section 25-F the workman can be reinstated with other consequential reliefs.

30. Earlier in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

31. In recent decision (2010) 1 SCC (L&S) 545 Jagbir Singh V/s Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D. Act Hon'ble Apex Court has observed that:—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that

an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

32. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:—

"While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour court can award compensation."

"There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

33. In present matter, the workman has worked as school bus attendant and was getting Rs. 800 p.m. as wages. He was not holding any regular post. Keeping in view the nature of job and nature of employment, the laps of time after termination of the services, the delay in raising the dispute, amount of wages being paid to him, the total length of service rendered by the claimant and having regard the entire facts and circumstances of the case, instead of reinstating him the interest of justice will be sub served by paying compensation to the workman instead and in lieu of relief of reinstatement in service.

34. Accordingly, the reference is answered in favour of the workman and it is held that the action of the management in termination of the services of the workman being in violation of section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs. 25,000 (Twenty Five Thousand only) instead and in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

35. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 722.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजनल इंजीनियर, भारत संचार निगम लिमिटेड, हिमाचल प्रदेश के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 49/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/53/2009-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 722.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 49/2009) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Divisional Engineer, Bharat Sanchar Nigam Limited, Himachal Pradesh and their workman, which was received by the Central Government on 31/01/2014.

[No. L-40012/53/2009-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

**Case No. ID 49 of 2009, Reference No. L-40012/53/2009/IR (DU) dated 03.09.2009**

Suresh Kumar S/o
Late Sh. Rajinder Kumar
R/o VPO Barolian Kalan,
Tehsil & Distt. Una (HP). ...Workman

*Versus*

1. Divisional Engineer (Telephones)
Bharat Sanchar Nigam Ltd. Una (HP)

2. The Sub-Divisional Officer (Telephones),
Bharat Sanchar Nigam Ltd.,
Mehatpur, Una (HP) ...Management

**APPEARANCES:**

For the Workman: Sh. Arun Batra Advocate

For the Management: Shri K.K. Thakur Advocate

**AWARD**

Passed on 30.12.2013

Government of India Ministry of Labour vide notification No. L-40012/53/2009/IR (DU) dated 03.09.2009 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether the action of the management of Divisional Engineer (Telephones), BSNL, Una, in terminating the services of their workman Sh. Suresh Kumar *w.e.f.* 1/10/2007 is legal and justified? If not, what relief the workman is entitled to?"

2. The brief facts of the case accoridng to the workman are that he was engaged as Majdoor on 1.11.2005 by SDO (T) Mehatpur with the approval of DET, Una-I. But the management has taken duty from his as Mazdoor as well as Phone Mechanic. He remained continuously working with the management upto 30.09.2007 and his services were terminated illegally *w.e.f.* 1.10.2007 by SDO (T) Mehatpur. As per the workman he has put in more than 240 days of service but his services have been terminated in gross violation of Section 25F of the I.D. Act, 1947. The management also violated section 25G of the I.D. Act, 1947, as the management retained his juniors in service. He was paid monthly salary of Rs. 2,000 per month on ACG 17. It is further pleaded by the workman that as Phone Mechanic, he used to repair Cable Joint and attended the complaint of Telephone Connections. It is pleaded by the workman that although he has performed the skill duties of Phone Mechanic in addition to duties of Majdoor, but he has not been paid skilled wages. It is pleaded by the workman that the work against which he was working is still available, but the management terminated his service which amounts of unfair labour pratice. It is prayed by the workman that the management may be directed to reinstate the workman in service with continuity along with back wages.

3. The management filed written statement, preliminary objection has been taken, that the workman was engaged/ hired as labour on need basis for loading/unloading and he was made payment on job basis. He was never engaged as a regular or temporary employee. His engagement was never dispensed with rather as no work was available against which he was engaged. He was engaged from time to time for sundry job and he was paid for the same. It is further pleaded in the written statement that the workman was engaged from time to time during broken period from 9.7.2007 to 13.7.2007 for providing four majdoors for five days and paid a sum of Rs. 2,000 from 9.8.2007 to 12.8.2007 for providing five majdoors for four days and paid Rs. 2,000 from 9.9.2007 to 13.9.2007 to provide four majdoors for five days and paid and from 13.9.2007 to provide five majdoor for four days and paid Rs. 2,000. During above period the applicant worked as a contractor and never worked as a temporary employee. The applicant during 2005-06 from November 2005 to August, 2006 worked for 20, 18 or 5 days only in different month, numbering about 183 days in all. Thus he never completed 240 days as claimed by him. As the applicant was engaged casually on need basis, therefore, he cannot seek regularization/ re-instatement in service. It is also pleaded that the applicant was not a workman, he was never called for any attendance and he was paid on ACG-17 form. It is prayed by the management that the reference may be answered against the workman. Along with the written statement, the management also filed details of working days from November 2005 to August 2006, in which it is shown that the workman has worked for 183 days during this period. The management very fairly vide application dated 15.3.2010 admitted the fact that during the proceedings, the management found from ACG Form 17 of May ad February 2006, that workman worked for seven days. Thus total working days come to 190 days instead of 183 days.

4. In evidence workman filed his affidavit. The management also filed the affidavit of Shri L.L. Sharma, D.E. BSNL, Una, Exbt. M 1 and also placed on record ACG 17, Exbt. M2 to M15. The management also placed on record payment record paid to different persons during the period in question.

5. In evidence during cross-examination the workman admitted that he was not given any appointment letter and he was working on wireless and for joining of the cables. He was sent for attending the complaints of telephone. He was not given any termination letter. The workman denied the suggestion that he worked through contractor and he paid wages to three or four workman after getting the same from the department. It is admitted by the workman that there is no dispute regarding payment and he was getting Rs. 2,000 per month and was being paid regularly. He also stated that he has no document to prove that he worked for more that 240 days in the preceding year to the date of termination. He also admitted that mechanic works comes in group 'C' and he is not under gone any training in the department. It is admitted by the workman that there was no advertisement and no interview held and he was out rightly engaged and no application for appointment was moved by him. At present he is not doing anything.

6. The witness of the management Sh. L.L. Sharma stated in the cross-examination that the applicant has worked as contractual worker and there was no contract between the workman and the management. The workman was directly worked with the management and payment was made good. It is further admitted by the witness of the management that no notice, retrenchment compensation was given to the workman at the time of his disengagement

and the workman worked only for 190 days. He denied any knowledge whether Sandeep, Rajinder and Jaswinder are still working with the department.

7. I have heard the learned counsel for the parties gone through the evidence and record of the case.

8. It is submitted by the learned counsel for the workman that the workman completed more than 240 days in a year preceding to the date of termination *i.e.* 1.10.2007 and no notice rerenchment, compensation and pay in lieu of notice was given to the workman at the time of his termination. Therefore, the management has violated section 25F of the I.D. Act and the workman is entitled for reinstatement in service with full back wages. The management also violated Section 25G of I.D. Act 1947, as junior to workman were retained in service by the management. The learned counsel for the workman prayed that action of the management is gross violation of the provisions of I.D. Act 1947.

9. On the Contrary the learned counsel for the management submitted that the workman was not working with the management as majdoor rather he was a contrctor who used to supply the labour for petty work for the period for ranging from 4 to 5 days and he was paid the charges on ACG 17 form. Moreover the workman has not put in 240 days service proceeding to the date of termination *i.e.* 1.10.2007. It is further submitted by the learned counsel for the management that the applicant was not a workman nor he put in mandatory service of 240 days in a calendar year preceding to the date of termination, therefore, the management was not under any obligation for complying the provisions of Section 25F of the I.D. Act. It is further submitted by the learned counsel for the management that no junior to the workman was retained by the management in service, therefore, the management has not also violated Section 25G of the I.D. Act. There was no appointment letter, no termination letter was given to the workman, therefore, the workman is not eligible for any benefit under the provisions of the I.D. Act and reference deserves to be answered against the workman as management has never terminated the service of the workman *w.e.f.* from 1.10.2007.

10. Now the first question for determination is whether workman was an employee of the management or not? In this regard the workman in his cross-examination admitted that no appointment letter was given to him. No termination letter was given to him. Besides this, it is admitted by the workman that no interview was held, no application for appointment was moved. The management pleaded that the workman was engaged/hired as labourer occasionally on need basis for department work and for this work, he was paid on job basis. The workman was never engaged as regular or temporary employee. So far documentary evidence is concerned ACG-17 forms (Ex-M2 to M15) reveals that the management paid to the workman some time for four mazdoors for five days and some time five mazdoors for four days and for different period for different mazdoors on casual basis. In these facts and circumstances, the workman failed to establish that he was an employee of the management of BSNL.

11. Now the 2nd question for determination is whether workman worked for 240 days in a calendar year preceding to the date of termination i.e. 1.10.2007. The management very fairly admitted that workman worked 190 days only with the department. But the workman failed to establish that he worked for more than 240 days in a calendar year preceding to the date of termination *i.e*. 1.10.2007. It is incumbent upon the workman to prove that he worked with the management for more than 240 days in a calendar year preceeding to 1.10.2007 to attract the provision of Section 25F of the I.D. Act 1947 which the workman failed to prove. Besides this during his cross-examination the workman admitted that he has no document to prove that he worked for more than 240 days with the management preceeding to the date of termination. The case law relied upon by the workman in the case of 1010(3) SCT page 319 Anoop Sharma *Vs.* Executive Engineer Public Health Division No. 1 Panipat is of no help as the facts of the case law are quite different to the facts of the case in hand. In the case in hand, the workman poorly failed to prove his working with the department for more than 240 days in a calendar year preceding to the date of termination.

12. In view of the discussion made in the earlier pares, in the fact and circumstances of the case, the workman failed to prove any violation of the provisions on the part of the management. Therefore, the workman is not entitled to any relief what so ever. The reference is answered against the workman. Hard Copy as well as soft copy be sent to the Central Govt. for publication.

Chandigarh
30.12.2013

S.P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 723.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 1200/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/20/2005-आई आर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 723.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1200/2005) of the Central Govertment Industrial Tribunal/Labour Court, No. 1, Chandigarh now as shown in the Annexure, in the industiral Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited, Punjab and

their workman, which was received by the Central Govenrment on 31/01/2014.

[No. L-40012/20/2005-IR(DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH.**

**Case No. I.D.No 1200/2005**

Ram Singh S/o
Shri Milkhi SIngh,
R/o H. No. B-13, Matti Dass Nagar,
(Mahesh Nagar),
Ambala Cantt.(Haryana) ....Applicant

*Versus*

1. The General Manager (Telecom)
BSNL, Lila Bhawan Patiala
(Punjab) Patiala.
2. The Assistant General Manager,
Telecom Circle, BSNL,
Sector-34-A, Chandigarh.
3. The Sub Divisional Officer (Phanes-I),
Baradari Garden, Telephone Exchange,
Opposite Kali Devi Mandir, Patiala.
4. The Divisional Engineer, Telecom,
BSNL (External-I) Baradari Garden,
Telephone Exchange, Opposite
Kali Devi Mandir, Patiala. ....Respondents

**Appearances:**

For the Workman: None

For the management: Shri G.C. Babbar

**AWARD**

Passed on: 07.01.2014

Central Govt. vide notification No. L-40012/20/2005-IR (DU) dated 17th August, 2005 has referred the following dispute to this Tribunal for adjudication.

> "Whether the action of the management of Bharat Sanchar Nigam Ltd. Patiala in removing Shri Ram Singh S/o Shri Milkhi Singh, Ex-Mazdoor w.e.f. 17.10.1988 from service retrospectively without giving him proper opportunity to defend his case is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?"

2. Case/reference was referred by the Ministry of Labour to the CGIT-II, Chandigarh. Vide Notification No. L-40012/20/2005-IR (DU) dated 17th August, 2005 which later on tranferred to this Tribunal vide letter No. H-11026/2/2009-IR(C-II) dated 21.4.2009. On non appearance of the workman this Tribunal vide order dated 15.7.2010 returned the reference to the Central Govt. without adjudication in absence of the workman for non prosecution. Vide notification in the Govt. of India Gazette dated 27.7.2010, the award was published. On moving the application by the workman for setting aside the award/order dated 15.7.2010, the reference was restored to its original number vide order dated 28.9.2010, on assurance of the workman that he would insure his presence on all dated fixed by this Tribunal.

3. Strangely enough from the date 25.7.12 the workman has not put his appearance. As many as twelve hearing have been provided for evidence of the workman but no one put appearance on his behalf. Finally on 3.1.2014 arguments on behalf of the management were heard.

4. The case of the workman in brief as per claim statement is that he joined the management on 17.5.1969 as line man and there was no complaint against him. That he had taken two days casual leave for out station which was sanctioned, he fell ill, he submitted his medical leave with medical certificate for one month and he also received the salary for this period. On 31.8.92 he submitted his joining report to the S.D.O. who forwarded the same to TDM Patiala vide letter dated 29.10.92 for further action but he was not taken on duty. Due to sudden death of his father the workman lost his mental balance and left his house for his treatment and after getting treatment he submitted his joining report on 30.3.2004. He was not allowed to join duty but issued a charge sheet on 30.3.2004 with a direction to file reply to the charge sheet within 10 days. On the charge that workman remained absent continuously from 17.10.1988. It is pleaded by the workman that he explained the reasons for his absence from his duty but SDO Phones Respondent no. 3 vide order dated 26.10.2004 passed for removal from service w.e.f. 17.10.1988 which received by the workman on 11.12.2004. The workman pleaded that order to removal from service is illegal, null and void on the grounds that charge sheet was issued without the list of witnesses and documents, the charge sheet was issued by the SDO who is not appointing authority or punishing authority, the order of removal from service was passed without conducting any domestic enquiry, he was not given full opportunity of being heard which is against the principles of natural justice, no show cause notice was issued and order of removal from service was passed by imcompetent authority. It is further pleaded that order dated 26.10.2004 of removal from service is also illegal as the same was retrospectively made effective w.e.f. 17.10.1988. The workman prayed that order of removal from service may be set-aside and he may be reinstated in service with full back wages and continuity of service.

5. The management in written statement pleaded that the workman never submitted application of leave including the leave on medical ground. No medical certificate was received by the management. The Management also denied that the workman has received his salary for the period of

his absence. It is pleaded by the management that workman remained absent continuously *w.e.f.* 17.10.1988. He was directed to report for duty within seven days on 2.8.2002. The above letter received undelivered as the workman was not residing on the address given by him to the management. Another letter dated 15.3.2004, sent to the workman which also received undelivered with the remark that the workman has sold his house and proceeded to Ambala, but the address of that place is not available. Another letter dated 23.9.2003 was sent to SSP Patiala regarding the where abouts of the workman and police authorities submitted the reply that the workman resident of village Kehri Gandian had sold the property 10-12 years back and present address is not available. It is admitted by the management that workman submitted joining reprot on 31.8.92 which was forwarded to SDO (Phones) Patiala.The TDM advised the SDO to take necessary disciplinary action against the workman for his absence from duty. Accordingly a charge sheet under Rule 14 of CCS (CCA), Rules 1965 which was received by the workman on 31.3.2004. The workman submitted reply dated 16.4.2004 admitted the charges against him. The SDO who is the competent authority passed the order of his removal from service *vide* order dated 7.12.2004. Although the workman had submitted two medical certificates one from Dr. Sat Pal Gupta and another from Dr. R.K. Patnaik certifying that the workman was suffering from Psychosis and was under their treatment from 1.8.2002 to 2.8.2002 and from 3.8.2003 to 10.4.2004. It is pleaded by the management that these certificates were manufactured one and just to cover up the period otherwise he would have submitted the medical certificate and application for leave from time to time. He never applied for leave and absence of the workman was proved. As regard the claim of the workman about the death of his father and loosing of mental balance it is only to cover up his absence. As the workman did not submit any satisfactory explanation of his absence, rather admitted the charges framed against him as he did not wish to further continued with the processing of enquiry therefore, the charges stand proved and order of removal from service was passed after considering the relevant record. It is pleaded by the management that charges were proved by the documentary evidence and there was not individual witness, as such no list of witnesses was required nor any witness was produced. It is further pleaded that disciplinary authority in the case of line man is SDO and his Appellate Authority is DET. No further enquiry was needed as the workman admitted the charges. It is further pleaded that no show casuse notice was necessary before passing the order of removal from service. It is prayed by the management that the workman is not entitled to any relief and the reference may be answered against the workman.

6. Both the parties in evidence filed their respective affidavit in which the management attached letters written to the workman, order of removal from service, charge sheet dated 30.3.2004 and reply dated 15th April 2004 by the workman to the charge sheet. The management also placed on file the medical certificate dated 2.8.2003 issued by Dr. Sat Pal Gupta and medical certificate dated 10.4.2004 issued by Dr. R.K. Patnaik.

7. As none appeared on behalf of the workman, arguments on behalf of the management heard. Learned counsel for the management during arguments submitted that the workman remained absent *w.e.f.* from 17.10.1988 without any application for leave and medical certificate. From the documents *i.e.* number of letter written to the workman he never reported for duty and the workman submitted his joining report on 31.8.1992 which was forwarded to SDO (Phones-I) Patiala. The workman was issued charge sheet dated 30.3.2004 which was received by him in person and in his reply dated 15.4.2004 he admitted the charges and after taking into consideration the facts of the case the order dated 7.12.2004 for removal from service was passed. No further enquiry was conducted as workman admitted the charges leveled against him in the charge sheet. No show cause notice was given to the workman as was not required before passing the order of removal dated 7.12.2004. As the workman has admitted the charges there was no necessity of holding enquiry and order of removal was passed taking into consideration the admission of the workman. In the circumstances the workman is not entitled to any relief.

8. I have heard the Learned counsel for the management and have also gone through the record of the case.

9. Management clearly stated that workman remained absent from duty continuously *w.e.f.* 17.10.1988. This fact has been admitted by the workman in his affidavit dated 9.8.2007 filed in this tribunal. In para 5 of this affidavit workman admitted that due to the sudden death of his old aged father on 3.1.1998, he lost his mental balance and he left his house for the treatment. In para 6 of this affidavit workman admitted that after getting the treatment from various doctors, he submitted his joining report on 30.3.2004. The management in its documentary evidence filed many documents to establish that the workman left his house without informing his new address to the management. Management sent regd. Letters as well as requested to Senior Superintendent of Police, Patiala to get his address. But as per report, neither workman informed his new address nor the postal authorities as well as Police authorities could found his address.

10. A charge sheet dated 30.3.2004 was issued to him which was received by workman on 31.3.2004 containing the following article of charges:—

**Article 1**

Sh Ram Singh while working as Lineman Phones Patiala during the year 1988 was absent from duty *w.e.f.* 17.10.88. He did not sent any application for

any kind of leave and he was also not available on his permanent address given in his service book.

Thus. Sh. Ram Singh Lineman has failed to maintain devotion to duty and acted in a manner un becoming of a Government Servant.

**Article 2**

Sh. Ram Singh while working as Lineman Phones Patiala during the year 1988 absented from duty without any intimation *w.e.f.* 17.10.88. Letters were posted on the permanent address as mentioned in the service book and were received undelivered with the remarks that the addressee has shifted to Ambala without leaving address. No address has been given so far for any correspondence. Thus Sh. Ram Singh lineman has failed to maintain devotion to duty and acted in a manner un becoming of a Government Servant.

11. To this charge sheet workman submitted his reply admitting that workman was under mental stress due to some domestic circumstances and sometimes his system become insane. In para 3 of this reply workman also mentioned that workman become insane and left his residence and remained out of his residence and city about 15 years. Thus when the workman admitted the charges there was no need to produce any witness in the department enquiry. Considering the facts and circumstances the disciplinary authority passed the order dated 7.12.2004. The relevant part of the order is as under:—

"But considering his past record and hence taking a lenient view, I, Beant Singh, SDO (Phone-I) BSNL, Patiala hereby order punishment of removal from service *w.e.f.* 17.10.1988 which shall not be a disqualification for future employment under the Govt."

12. In his affidavit filed in this Tribunal on 3.9.2013, the above Sh. Beant Singh, SDO narrated the facts and circumstances which led to the passing of order dated 7.12.2004 which is explanatory and unrebutted. Therefore, taking into consideration all the material on record and documentary evidence produced by the management as the workman remained absent from duty for a long period and without informing the address, the workman is not entitled to any relief.

13. The action of the management of Bharat Sanchar Nigam Ltd. Patiala in removing Shri Ram Singh S/o Shri Milkhi Singh Ex-Mazdoor *w.e.f.* 17.10.1988 from service retrospectively is legal and justified.

14. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for furter necessary action.

Chandigarh
7.1.2014 S. P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 724.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑथर्स, कोल डेम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कापोरेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 33/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं. एल-42012/157/2010-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 724.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No 33/2010) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workman, which was received by the Central Government on 31/01/2014.

[No. L-42012/157/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.**

Case No. ID 33 of 2010. Reference No. L-42012/157/2010/IR(DU) dated 14-02-2011

Chaman Lal, S/o
Sh. Surender Ram,
Village Baroti, Tehsil-Sundernagar,
Mandi (HP). ...Applicant

*Versus*

1. The General Manager.
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP).
3. Project Manager,
   M/s. ITD Cementation India Ltd.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, PO Slapper,
   The Sudnernagar, Mandi (HP). .....Respondents

**APPEARANCES:**

For the Workman: Shri M.S. Gorsi advocate.

For the Management: V.P. Singh, Hem Raj Sharma & Neeraj Srivastava.

**AWARD**

Passed on:-22-1-2004

Central Govt. *vide* notificaiton No.L-42012/157/2010/IR(DU)dated 14/02/2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Chaman Lal S/o Shri Sunder Ram, Vill. Baroti, Tehsil Sundernagar, Distt. Mandi (HP) by the Project Manager M/s. ITD Cementation India Ltd., Village Kayan, PO Slapper, Tehsil Sundernagar, Distt Mandi *vide* order dated 13/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the above workman is entitled to from the above Employer?"

2. In claim statement the workman pleaded that he was appointed as Junior Driller with respondent No 3 *i.e.* ITD Cementation India and joined the service on 14/05/2005 and worked till 14.08.2008 when his services were retrenched. He was earning Rs. 8,000 including overtime duties and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I.D. Act. His juniors have been retained in service and fresh appointment were also made. It is further pleaded that above 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent No. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No. 1. Respondent No. 2 in ITDPCL submitted that the last drawn wages of the workman was Rs. 3175 and the workman was retrenched as per law. Respondent No.3 *i.e.* ITD Cementation filed reply standing therein the respondet No.3 engaged the workman being Sub-contractor of respondent No.2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 8375 through demand draft on 12.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd. deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished work in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/8 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to check the rules and regulations of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behalf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heard the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D. Act as the work is still going on. The workman is entitled to be reinstated in service with full back waged.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCN and the above ITDPCL engaged Sub-contractor *i.e.* ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative for the Sub-contractor respondent No.3 *i.e.* ITD cementation submitted that the workman was given Rs. 8,375 through demand draft on account of retrenchment compensaiton and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid his dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted.Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10.The case of the workman is that he was retrenched from service by respondent No. 3 *vide* order dated 13.08.2008 without following the principle of last come first go. Whereas

all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WWI admitted that he was not given any notice for retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MW1 Neeraj Srivastava appearing on behalf of the respondent No.3 deposed in cross-examiantion that work of the company was started in 2005 and finished in the year 2008 with respondent No.2. It is specifically pleaded by the management/respondent No.3 that all the work force was retrenched on the completion of contract/ work in 2008. The submission of the learned counsel for the workman that the management again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 13.08.2008. As noting has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchement compensation and notice pay amounting to Rs. 8375/- through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Chaman lal *vide* order dated 13.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer.

11. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
22.1.2014 S.P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 725.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑथर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 43/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/183/2010-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 725.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 43/2010) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workman, which was received by the Central Government on 31/01/2014.

[No. L-42012/183/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

Case No. ID 43 of 2010. Reference No. L-42012/183/2010/ IR(DU) dated 18.02.2011

Jitender Pal,
S/o Sh. Shankar Dass,
Village Harnora, PO Harnora,
Tehsil Sadar, Bilaspur. .....Applicant

*Versus*

1. The General manager,
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. The Managing Dir.,
   M/s AKS Engineers and Contractors
   Kol Dam Hydra Electric Power Project,
   Sanjay Sadan, Chhota Shimla-171002.
3. Project Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP) .....Respondent

**APPEARANCES:**

For the Workman: Shri M.S. Gorsi, Advocate.

For the Management: V.P. Singh, Shamsher Singh

**AWARD**

(Passed on: 28.01.2014)

Central Government *vide* notification No. L-42012/183/ 2010/IR/(DU) dated 18.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Jitender Pal S/o Shri Shankar Dass, Village Harnora, PO Harnora, Tehsil Sadar, Distt. Bilaspur (HP) by the Project Manager, M/s ITD Cementation India Ltd., Village Kyan, PO Slapper, Tehsil Sundernagar, Mandi *vide* order dated 13.08.2008 without following the principle of last come first go is legal and justified? if not, what relief the above workman is entitled to?"

2. At the time of preparation of the award, it came to the notice that in this reference Project Manager, M/s ITD Cementation India Ltd., Village Kyan, PO Slapper, Tehsil Sundernagar, Mandi has not been made party. Therefore,

no notice was sent to Project Manager, M/s ITD Cementation India Ltd., Village Kyan, PO Slapper, Tehsil Sundernagar, Mandi. Although the relief claimed by the workman is against the Project Manager, M/s ITD Cementation India Ltd., Village Kyan, PO Slapper, Tehsil Sundernagar, Mandi and has a major roll in the retrenchment of the workman.

3. In view of the fact that no notice was sent to this party, therefore, the reference can not be answered in the absence of the necessary party *i.e.* Project Manager, M/s ITD Cementation India Ltd., Village Kyan, PO Slapper, Tehsil Sundernagar, Mandi.

4. The reference is disposed off accordingly. Central Government be informed. Soft copy as well as hard copy be sent to the Central Government for publication.

Chandigarh
28.1.2014 S.P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 726.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, प ग ई म इ र एंड अदर्स, चंडीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1364/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.02.2014 को प्राप्त हुआ था।

[सं॰ एल-42012/102/2007-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 726.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1364/2008) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Director, PGIMER, Chandigarh and Ors. and their workman, which was received by the Central Government on 02.02.2014.

[No. L-42012/102/2007-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

**Present :** Sri A. K. Rastogi, Presiding Officer

Case No. I. D. 1364/2008

Registered on 11.03.2008

Smt. Santosh W/o
Sh. Rajender, H. No. 906,
Janata Colony, Sector 12,
Chandigarh. .....Petitioner

*Versus*

1. The Director, PGIMER,
Sector 12, Chandigarh.
2. M/s A.N. Kapoor (Janitors) Private Limited,
PGIMER Room No. 38,
Nehru Sarai, Chandigarh. .....Respondent

**APPEARANCES**

For the workman Sh. Anil Mehta, Adv.

For the Management Sh. Madan Mohan, Advocate.

**AWARD**

Passed on 09.04.2013

Central Government *vide* Notification No. L-42012/102/2007-IR(DU) dated 29.02.2008, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of M/s A.N. Kapoor (Janitors) Private Limited a contractor of the Nehru Hospital, PGIMER, Chandigarh in terminating the services of their workman Smt. Santosh *w.e.f.* 18.11.2006 is legal and justified? If not, to what relief the workman is entitled to?"

After receiving the reference notices were issued to the parties. They put in their appearance but respondent No. 2 did not appear subsequently and contest the case hence he was put *ex parte vide* order dated 30.03.2012.

In the claim statement workman pleaded that she was appointed by Director PGI *w.e.f.* April, 2001 on monthly salary of Rs. 2400/- and she continued to work till April, 2005 when her services were deployed to the contractor respondent No. 2 *i.e.* M/s A.N. Kapoor. She continued to work with the above mentioned contractor up to 17.11.2006 when her services were terminated by the above mentioned respondent No. 2. It is pleaded by the workman that for all intents and purposes she was the employee of respondent No. 1 *i.e.* PGI as she was under the control of that respondent who was the principal employer. She has completed more than five years service with the management and completed 240 days in preceding year. It was also alleged that the action of the management in terminating the services of the workman is against the provisions of Industrial Disputes Act. That mandatory provision of Section 25F has not been complied with as she was not given any notice and notice pay or retrenchment compensation at the time of termination. The principle of "first come last go" was also not observed by the management and juniors to her were retained. It is further pleaded by the workman that her termination is not a termination simplicator but it is a punishment and the management has not conducted any inquiry. The termination is illegal and is liable to be set aside. According

to her she is entitled to reinstatement with full back wages and continuity of service.

The claim was contested by the management of PIG *i.e.* respondent No. 1. They filed written statement *inter alia* pleading that the workman was employed by contractor M/s. A.N. Kapoor Private Limited in accordance with the terms and conditions settled between them without any involvement of the answering respondent PGI. Mere employment of contract labour does not create any relationship as direct employee of the management of the PGI. There was no relationship between the applicant and the management of PGI and provisions of ID Act are not applicable qua the respondent No. 1 *i.e.* PGI. Therefore the reference be decided in favour of the management of PGI.

In support of her case the workman filed her affidavit while on behalf of management (PGI) affidavit of Sh. C.S. Maan, Administrative Officer (H) was filed.

However on 9.4.2013 workman Santosh appeared and gave the statement that she is presently working with the Contractor Gill of PGI and she has no dispute with the old Contractor *i.e.* M/s. A.N. Kapoor Private Limited and she doe's not want to pursue the present reference. It is thus clear from the statement of workman that there is no dispute now between the parties. Therefore a 'No Dispute' award is passed in the case. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 727.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ इंजीनियर, दीपक प्रोजेक्ट सेमा सुरक्षा सड़क संगठन, शिमला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एंव श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 24/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-14011/8/2000-आई आर (डी यू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 727.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 24/2007) of the Central Government Industrial Tribunal/Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Engineer, Deepak Project Sema Surksha Sarak Sangham, Shimla and their workmen, which was received by the Central Government on 31/01//2014

[No. L-14011/8/2000 -IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

Case No, ID 24 of 2007. Reference No. L-14011/8/2000/ IR(DU)dated 21.06.2000

Sema Surksha Sarak Sangthan Mazdoor Sangh.
Himachal Pardesh through its
President 92/2 Dhingo Temple Road
Near Military Gate Sanjauli.
Shimla-171006. ....Applicant

*Versus*

I. Chief Engineer,
Deepak Project
Sema Surksha Sarak Sangthan.
Shimla (Himachal Pradesh) 171004. ....Respondent

**APPEARANCES:**

For the Workman: — Sh. B Nandan (Advocate)

For the Management: —Sh. Sandeep Bansal (Advocate)

**AWARD**

Passed on: 22-01-2014

Central Govt. *vide* notification No.L-14011/8/2000/ 1R(DU)dated 21.06.2000 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether the action of the management of Border Roads Organisation in denying the demands (List enclosed) of Seema Suraksha Sarak Sangthan Mazdoor Sangh is legal and justified? If not to what relief the concerned workmen are entitled?"

2. This reference (ID No. 259/2000) was earlier disposed off by this Tribunal *vide* award 08.08.2002. Aggrieved by the award, the workmen union filed Writ Petition No. 202 of 2003 in the Hon'ble High Court of Himachal Pradesh, Shimla. The Hon'ble Himachal Pradesh High Court *vide* order dated 30.05.2007 set aside dated 08.08.2002 and remanded back the reference to this Tribunal Hon'ble High Court of H.P. passed the following orders:—

"Needs to be remanded back as the issue of jurisdiction of the Tribunal has not been considered and decided in view of the ratio of the law laid down by the apex court starting from the decision rendered in Bangalore water supply *Versus* A. Rajappa reported in AIR 1978 SC 548. In view of the aforesaid, the award dated 08.08.2002 is set aside and the matter is remanded back to the tribunal with a direction that the dispute referred to the tribunal be adjudicated upon and decided on the issue of jurisdiction and on merits as well after affording due opportunity to the

parties. The representative is disposed off accordingly."

3. After remand, the reference was registered as ID No.24/2007. The brief facts of the case according to the workers union in the claim statement are that the workers had been working on the road named as Dhani Basantpur Kingal-Kinnaur in different sections and in different groups for the purpose of maintenance and doing the work at par with the workers employed on regular basis. But the daily workers have been denied the benefits on the principle of equal pay for equal work. The work performed by workers is of permanent nature and the working condition governing the service of the daily wages workers in the state of Himachal Pradesh are applicable to the workers. The workers have been denied the minimum wages fixed by the state of Himachal Pradesh. The workers whose named have been given in the claim statement list and whose service were terminated in the year 1996 be reinstated in service and those who have completed 10 years continuous service be regularized and other benefits of promotion and all attendant benefits be allowed to them. Workers union also pleaded inclaim statement that union of daily wages workman named Seema Suraksha Sarak Sangthan Mazdoor Sangh H.P is a registered union. The workman 17 in number whose name are given in claim statement working continuously as labourer and mates on daily wages with the management. Workers had been working on DGBR road in district Shimla H.P. in different sections. Workers have been continuously working with the management for the maintenance repair and construction work of the roads. Respondent management having labour, mates. Supervisors etc. on regular basis who are required to carry out similar type of work but the staff on regular basis are getting higher pay scale and other service benefits. Therefore, on the principle of equal pay for equal work the workers are entitled to all the service benefits including financial benefits which are permissible to the similar situated workers. Workers raised a dispute before the Hon'ble High Court of Himachal Pradesh 06.09.1995. Respondent management had dismissed/terminated service of all petitioners workman without assigning any reason and without giving any notice. The workers have put in the best part of their life. Now it is extremely difficult to get employment elsewhere. The respondent management has not framed any rules & regulations for regularizing the service of the workers. Workers union in the claim statement, claimed that the workers be given pay from the date of illegal termination/dismissal service condition of daily wages workman which are applicable in the state of H.P. All the benefits be allowed to the workers. In claim statement workers also requested that the workers who have completed 10 years service be regularized and the promotion and the recruitment rules be framed for daily wages workman.

4. Management filed detailed reply against the claim statement stating therein that the present claim application is not maintenable because GREF (General Reserve Engineer Force) is an integral part of the Arm Forces and as a result no union is recognized in BRO (Border Rood Organisation). So called Seema Suraksha Sarak Sangthan Mazdoor Sangh H.P. have no locus standi to contest the case on behalf of the applicants. CPL (casual paid labourer) has no cause of action in view of the terms & conditions of their engagement which are determined in terms of Govt. of India which has Presidential sanction copy as annexure R 1 attached with the reply. These terms & conditions have been incorporated in paras 501 and 508 of the border road regulations (copy of annexure R2 have been filed). No CPL, is engaged for more than 179 days of a spell and there after their service are dispensed with. They can be discharge any time without any notice and reason being no longer required. GREF has been declared as integral part of armed forces of India. *Vide* Govt. of India Ministry of Shipping & Transport. BRDB. New Delhi. O.M. No.F81( I )64-Estt./ 70463/DGBR/E2A( T&C) dated 14.08.1885. A cops of which is attached to the reply as annexure R3. Members of the forces are governed by certain provisions of Army Act, 1950 and Army Rules, 1954. It is a disciplined force and discharging the sovereign functions of the state. GREF is not covered under the definition of industry within the meaning of section 2(j) of the Industrial Disputes, Act. 1947. The question has been settled in civil writ petition No.5130/1985. The question of regularization of service of CPL and payment of equal pay for equal work has already been discussed and rejected in the aforementioned decisions. Casual paid labourer (CPL) are required on daily wages basis to reinforce the existing regular pioneer force for not more than 179 days at a time and therefore, service are liable to be terminated at any time without any notice and assigning any reason. The engagement of CPL is treated afresh on every occasion. The work of construction of Dhani Basantpur Kingal-Kinnaur Road has been completed and even the maintenance work on the road has considerably being reduced as such a large number of CPL's have been discharged to avoid extra expenditure to the state. CPL'S further engagement is subject to availability of work against the sanctioned job. Since the GREF is construction agency, no casual personnel can be engaged on regular basis. Recruitment of regular employees in the department is doing strictly in accordance with the recruitment and promotion rules and they are required to have requisite qualification and physical standard of health. On the other hand the recruitment of CPL is merely for 179 days at a time with 8 hours of work in a day without any code of conduct.

5. The wages of casual personnel are fixed in accordance with the minimum wages act. Their welfare is looked after by the GREF and these CPL'S are provided with the welfare measures like Tyshelter, ration at subsidized rates, Serviceable clothing, free transport to and from work site, medical treatment in GREF medical units, compensation bonus a days rest with wages and national holidays

observed as paid holidays. There is no question of exploitation since they have no legitimate right either to the employment. Their regularization or payment of equal wages at par with the regular employees of BRO.

6. With these submissions management respondents requested that the applicants CPL 'S claim statement may be dismissed on the basis of primarily objection and also been devoid of the merits.

7. Workman union filed rejoinder reiterating the same allocations to which management also filed rejoinder reply.

8. In oral evidence the workmen Union examined Sh. Liaq Ram as WW1 who was cross-examined by the Ld. Counsel for the management. The workmen's union also placed on record 98 affidavits of the different workmen. The management also placed on record affidavit of M.L. Aggarwal who was posted as Senior Administrative officer of the management. The management also placed on the record affidavit of Lt. Col. V.K. Pandey Officer Commanding. 507 SS & TC (GREF) Chandigarh on the same lines as that of filed by Mr. M.L. Aggarwal.

9. First question to be determined in this reference is whether respondent management i.e. Border Roads Organization is covered within the definition of Industry as defined under Section 2-J of the Industrial Dispute Act 1947. It is pertinent to mention that Section 2-J has been substituted by Industrial Disputes (Amendment) Act 1982 (46 of 1982) Section 2-J *vide* Act No. 46 of 1982 reads as under:—

(1) "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature). whether or not:—

(i) .....

(ii) .....

(a) .....

(b) .....

But does not include;

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the Departments of the Central Government dealing with defence research, atomic energy and space: or

(7) .....

(8) .....

(9) .....

10. In this context Bangalore Water Supply and Sewerage Board 1978 LAB I.C. 467 has been cited. With most respect to the case law cited, it is to pertinent to mention that the above case was decided on 21.2.1978 and 7.4.1978 where as amendment of Section 2-J has been made effective *vide* amendment of Act No. 46/82 in the ID Act 1947, the situtation being quite different.

11. In this context the management, referred certain circulars photocopies of which have been filed. Annexure R-6 is a circular letter No. L-14012/30/91-IR (DO) of Ministry of Labour dated 30.8.91. In this letter Central Govt. did not consider to be fit case for reference for adjudication due to the reasons the Prime-facie. It appears that Border Road Organisation is not coverd under the definition of Industry with the meaning of Section 2-J of the Act. In this letter it has also been mentioned the Punjab and Haryana High Court in Civil Writ Petition No. 5130 of 85 dated 10the May 1990 has also given such a ruling in this regard Annexure R-10 letter dated 7.2.2001 from the department of Legal Affairs also mentioned that Border Roads Organisation is not an Industry. Similarly in Annexure R-11 letter dated 28.2.2001 from Govt. of India Ministry of Surface Transport also mentioned that Border Roads Organisation is not an Industry. Govt. of India. Ministry of Transport & Communication *vide* letter dated 31.7.1962 address to Director General Border Roads. New Delhi conveyed the sanction of the terms and conditions of service of casual personnel employed for the construction of Border Roads Project as shown in the Annexure to this letter. The annexures to this letter has also been filed which contain the period alongwith other benefits. In this annexure it has also been mentioned that Casual personnel not below the age of 16 years may be employed on daily or monthly rates of pay. Personnel on monthly rates may be engaged for periods up to six months at a time. Their services are liable to be terminated at any time without notice. They will not be eligible to any of the privileges of continued employment under Government, irrespective of the period of their service. They will not be entitled to any terminal benefits. Annexure R-3 is a letter dated 14.8.1985 from the Govt. of India Ministry of Shipping & Transport Border Roads Development Board, Delhi address to Director General Border Roads New Delhi, copies of which have been sent to various Ministries and Departments and Union Territories. In this letter it has been mentioned that matter regarding the status of General Reserve Engineer Force has been under consideration of

the Govt. for quite some time. This question was considered by the Supreme Court in the writ petition case of R. Viswan and Others *Vs.* Union of India and others. After examination of all the aspects of this matter the court came to the conclusion that "GREF" is an integral part of Armed Forces" for the purpose of Article 33 of the Constitution of India. Accordingly the General Reserve Engineer Force declared as integral part of Armed Forces of India.

12. The Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 5130 of 1958 Dalip Chand and Others *Vs.* Director General Border Organisation Roads elaborately dealt. It with the issue and held that GREF is not covered under the definition of 'Industry' being integral part of the Armed Forces. The Hon'ble Punjab and Haryana High Court again in LPA No. 1010 of 1990 affirmed the findings of the L.D. Single Bench. The Hon'ble Supreme Court in the case of Union of India and Others *Vs.* Vartak Labour Union reported in 2011-II-LLJ 295 has held that temporary or casual workers would not get any right for absorption, however long be their service if the orginal appointment was not by due process of selection under relevant rules. As mentioned above Ld. Counsel for the management submitted during arguments that Border Roads Orginsation being integral part of Armed Forces exercise regal and sovereign functions, therefore, Border Roads Organisation can not be termed as an Industry. The Ld. Counsel for the workmen Union and cited the following case laws:—

(1) (2000) 8 Supreme Court cases 61 Agriculture Produce Market Committee *Versus* Ashok Harikuni and Anothers.

(2) (2000) 3 Supreme Court cases 192, Harjinder singh *Versus* State Warehousing Corporation.

(3) (2010) 5 Supreme Court Cases 497, Anoop Sharma *Versus* Executive Engineer, Public Health Division No. 1, Panipat (Haryana)

(4) Order dated 1.10.2013 of the Hon'ble Himachal Pradesh High Court passed in COPC No. 4089 of 2013 and Order dated 30.4.2013 in Civil Writ Petition No. 1224 of 2013-C and order dated 2.12.2013 passed in Civil Writ Petition No. 9024 of 2013 of Hon'ble HP High Court.

13. I have gone through the case laws cited above. The facts and circumstances of the above case laws are quite different and are not applicable in the facts and circumstaces of the case in hand.

14. As stated above it is held that Border Roads Organisation is not an Industry Under Section 2-J of the ID Act 1947 read with ID (Amendment) Act 1982 and consequently this Tribunal has no jurisdiction.

15. As regards merits of case are concerned the witness produced by the wormen Union Sh. Liaq Ram WW1 admitted in the cross examination that all the workmen were working under the organisation controlled and run by the Army. All the workmen engaged on daily wages and were working under the Administrative control of Seema Suraksha Sarak Sangathan and this Organisation has the exclusive work for construction and it has no other work. Every workman was disengaged after every six month so that they could not complete 240 days at a stretch. The Hon'ble High Court in the Writ Petition No. 5130 of 1995 and in LPA No. 1010 of 1990 has settled the issue by holding that very nature of duties required to be performed by the two sets of personnel. Casual as against the pioneers and their qulification, manner of recruitment etc. are different the question of their being equated for the purpose of payment of wages etc. does not arise nor is there any violation of articles 14 and 16 of the constituion as the petitioners do not fall in the category of pioneers which form a clash by themselves. Therefore, the workmen cannot claim that they are entitled for the equal wages as regard to the wages paid to the regular permanent employees. It is settled position that the workers in the case in hand have not been appointed through regular process and their service conditions also different from the regular employees. As held in Union of India and Others *Versus* Vartak Labour Union mentioned above, temporary or casual workers would not get any right for absorption, however long be their service, if the original appointment was not by due process of selection under relevant rules. Similar views have also been expressed by the Hon'ble Supreme Court in the case of Secretary of State of Karnataka & Others *versus* Uma Devi & Others SCT 2006 (2) page 462. It has also been held by the Hon'ble Supreme Court that claim for equal pay for equal work as compared to their counterpart in regular establishment and other service condition are not tenable since the recruitment of regular employees in the department is done strictly in accordance with the recruitment and promotion rules and they are required to have requisite qualification and physical standard of health besides other preconditions.

16. In view of the above as the services of the workmen are not governed by any statutory rules as prescribed for regular employees, therefore, they can not be held equal in rank or status to the regular employees.

17. As discussed above in the forgoing paras it is held that action of the management of Border Roads Organisation in denying the demands of Seema Suraksha Sarak Sangthan Mazdoor Sangh is justified and legal and the worken/Union is not entitled to any relief. The reference is answered accordingly.

18. Central Govt. be informed Soft copy as well as hand copy be sent to the Central Govt. for publication.

Chandigarh
22.1.2014 S. P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 728.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑथर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट संदर्भ (संख्या 35/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/159/2010-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 728.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 35/2010) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workman, which was received by the Central Government on 31/01/2004.

[No. L-42012/159/2010-IR(DU)]
P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.**

Case No. ID 35 of 2010. Reference No. L-42012/159/2010/IR (DU) dated 18.02.2011

Chat Ram , S/o
Sh. Durga Dass,
Village Chhajwar, P.O. Mandoh,
Tehsil Sundernagar Mandi(HP).

...Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi(HP).
3. Project Manager,
   M/s. ITD Cementation India Ltd.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, PO Slaper,
   Teh. Sundernagar, Mandi(HP).

...Respondents

**APPEARANCES:**

For the Workman: Shri M.S. Gorsi advocate.

For the Management: Mr. V.P. Singh, Hem Raj Sharma & Neeraj Srivastava.

**AWARD**

(Passed on: 23-01-2014

Central Govt. *vide* notification No. L-42012/159/2010/IR(DU) dated 18.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services Chat Ram son of Shri Durga Dass, Village Chhajwar, P.O. Mandoh Tehsil Sundernagar, District Mandi by the Project Manager M/s ITD Cementation India Ltd., Village Kyan.P.O.Slapper, Tehsil Sundernagar, District Mandi *vide* order dated 16/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the concerned workman is entitled to?

2. In claim statement the workman pleaded that he was appointed as lab. Assistant with respondent No. 3 *i.e.* ITD Cementation India and joined the service on 7.05.2005 and worked till 17.08.2008 when his services were retrenched. He was earning Rs. 8,000/- including overtime duties and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I.D. Act. His juniors have been retained in service and fresh appointments were also made. It is further pleaded that about 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent no. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No. 2. *i.e.* ITDPCL submitted that the last drawn wages of the workman was Rs. 3175/- and the workman was retrenched as per law. Respondent no. 3 *i.e.* ITD Cementation filed reply stating therein that respondent no. 3 engaged the workman being Sub-contractor of respondent no. 2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidait in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 8375 through demand draft on

14.08.2008 on account of retrenchment compensation and notice pay. All the three witness of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd., deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to check the rules and regulations of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behlaf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heard the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D. Act as the work is still going on. The workman is entitled to be reinstated in service with full back waged.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCL and the above ITDPCL engaged Sub-contractor *i.e.* ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative for the Sub-contractor respondent No. 3 *i.e.* ITD cementation submitted that the workman was given Rs. 8375/- through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid his dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent no. 3 *vide* order dated 16.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WW1 stated that he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 8375/- through demand draft on 14.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MW1 Neeraj Srivastava appearing on behalf of the respondent no. 3 deposed in cross-examination that work of the company was starred in 2005 and finished in the year 2008 with respondent no. 2. It is specifically pleaded by the management/respondent no. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel for the workman that the management again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 16.08.2008. As nothing has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchment compensation and notice pay amounting to Rs. 8375/- through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Chat Ram *vide* order dated 16.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly.

11. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh. S.P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 729.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑथर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय.1, चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/160/2010-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 729.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award (I.D. No. 36/2010) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workman, which was received by the Central Government on 31/01/2014.

[No. L-42012/160/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-I, CHANDIGARH**

Case No. ID 36 of 2010. Reference No. L-42012/160/2010-IR (DU) dated 18.02.2011

Dharam Pal S/o
Sh Budhi Ram,
Village Chaknah, P.O. Bilag,
Tehsil Sundernagar Mandi (HP). ...Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP).
3. Project Manager,
   M/s ITD Cementation India Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP). ...Respondents

**APPEARANCES:**

For the Workman : Shri M. S. Gorsi advocate.
For the Management : Mr. V. P. Singh, Hem Raj Sharma & Neeraj Srivastava.

**AWARD**

(Passed on: 23-01-2014

Central Govt. *vide* notification No. L-42012/160/2010-IR(DU) dated 18.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Dharam Pal S/o Shri Budhi Ram, Village Chaknah, P.O. Bilag, Tehsil Sundernagar, District Mandi by the Project Manager M/s ITD Cementation India Ltd., Village Kyan, P.O.Slapper, Tehsil Sundernagar, Distt. Mandi *vide* order dated 16/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the concerned workman is entitled to?"

2. In claim statement the workman pleaded that he was appointed as packer operator with respondent No. 3 *i.e.* ITD Cementation India and joined the service on 19.5.2005 and worked till 17.08.2008 when his services were retrenched. He was earning Rs. 7,000 including overtime duties and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I.D. Act. His juniors have been retained in service and fresh appointments were also made. It is further pleaded that about 700 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent no. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No. 1. Respondent no. 2 i.e. ITDPCL submitted that the last drawn wages of the workman was Rs. 3175 and the workman was retrenched as per law. Respondent no. 3 *i.e.* ITD Cementation filed reply stating therein that respondent no. 3 engaged the workman being Sub-contractor of respondent no. 2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 8375 through demand draft on 14.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd., deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to ckeck the rules and regulations of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behlaf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heard the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D. Act as the work is still going on. The workman is entitled to be reinstated in service with full back waged.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCL and the above ITDPCL engaged Sub-contractor *i.e.* ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative for the Sub-contractor respondent No. 3 *i.e.* ITD cementation submitted that the workman was given Rs. 8375/- through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid his dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent no. 3 *vide* order dated 16.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WW1 stated that he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 8375 through demand draft on 14.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MW1 Neeraj Srivastava appearing on behalf of the respondent no. 3 deposed in cross-examination that work of the company was stared in 2005 and finished in the year 2008 with respondent no. 2. It is specifically pleade by the management/respondent no. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel for the workman that the management again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 16.08.2008. As nothing has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchment compensation and notice pay amounting to Rs. 8375 through demand draft as admitted by the workmman, in his cross-examination. Therefore, it is held that retrenchment of Shri Dharam Pal *vide* order dated 16.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly.

11. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
23.1.2014 S.P. SINGH, Presiding Officer.

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 730.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑदर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 37/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/161/2010-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 730.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 37/2010) of the Central Government Industrial Tribunal/Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workmen, which was received by the Central Government on 31/01/2013.

[No. L-42012/161/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

Case No. ID-37 of 2010. Reference No. L-42012/161/2010-IR(DU) dated 18.02.2011

Ramesh Kumar son of
Shri Mangat Ram,
VPO Slapper (Sudhan),
Tehsil Sunder Nagar, Mandi (HP) ....Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP).
3. Project Manager,
   M/s ITD Cementation India Ltd.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, PO Slaper,
   Teh. Sundernagar, Mandi (HP). .....Respondents

**APPEARANCES:**

For the Workman: Shri M.S. Gorsi, Advocate.

For the Management: Mr. V.P. Singh, Hem Raj Sharma & Neeraj Srivastava.

**AWARD**

(Passed on: 23-01-2014)

Central Govt. *vide* notification No. L-42012/161/2010-IR(DU) dated 18.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Ramesh Kumar son of Shri Mangat Ram, VPO Slapper (Sudhan), Tehsil Sunder Nagar, Mandi (HP), by the Project Manager M/s ITD Cementation India Ltd., Village Kyan. P.O. Slapper, Tehsil Sunder Nagar, District Mandi *vide* order dated 13/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the concerned workman is entitled to?

2. In claim statement the workman pleaded that he was appointed as Junior Driller with respondent No. 3 *i.e.* ITD Cementation India and joined the service on 4.5.2005 and worked till 14.08.2008 when his services were retrenched. He was earning Rs. 8,000 including overtime duties and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I.D. Act. His juniors have been retained in service and fresh appointments were also made. It is further pleaded that about 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent No. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No. 1. Respondent No. 2 *i.e.* ITDPCL submitted that the last drawn wages of the workman was Rs. 3175 and the workman was retrenched as per law. Respondent No. 3 *i.e.* ITD Cementation filed reply stating therein that respondent no. 3 engaged the workman being Sub-contractor of respondent No. 3 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 8375 through demand draft on 12.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd., deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to check the rules and regulations of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behalf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heared the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D. Act as the work is still going on. The workman is entitled to be reinstated in service with full back waged.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCL and the above ITDPCL engaged Sub-contractor *i.e.* ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was

for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative for the Sub-contractor respondent No. 3 *i.e.* ITD cementation submitted that the workman was given Rs. 8375 through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid his dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent no. 3 *vide* order dated 13.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WW1 stated that that he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 8375 through demand draft on 12.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MW1 Neeraj Srivastava appearing on behalf of the respondent no. 3 deposed in cross-examination that work of the company was started in 2005 and finished in the year 2008 with respondent no. 2. It is specifically pleaded by the management/respondent no. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel for the workman that the management again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference related to retrenchment order dated 13.08.2008. As nothing has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchment compensation and notice pay amounting to Rs. 8375 through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Ramesh Kumar *vide* order dated 13.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly.

11. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

S. P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 731.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर एंड ऑथर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 38/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/162/2010-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 731.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 38/2010) of the Central Government Industrial Tribunal/Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workmen, which was received by the Central Government on 31/01/2014.

[No. L-42012/162/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.**

Case No. ID-38 of 2010. Reference No. L-42012/162/2010-IR(DU) dated 18.02.2011

Shri Joginder Pal son of
Shri Khazana Ram,
Village Slapper, P.O. Slapper,
Tehsil Sunder Nagar, Mandi (HP) ....Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Electric Power Project,
   NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP).
3. Project Manager,
   M/s ITD Cementation India Ltd.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, PO Slapper,
   Teh. Sundernagar, Mandi (HP). .....Respondents

**APPEARANCES:**

For the Workman: Shri M.S. Gorsi, Advocate.

For the Management: Mr. V.P. Singh, Hem Raj Sharma & Neeraj Srivastava.

**AWARD**

Passed on: 23-01-2014

Central Govt. vide notification No. L-42012/162/2010/IR(DU) dated 18.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Joginder Pal son of Shri Khazana Ram, Village Slapper, Tehsil Sunder Nagar, Mandi (HP), by the Project Manager M/s. ITD Cementation India Ltd., Village Kyan. P.O. Slapper, Tehsil Sundernagar, District Mandi vide order dated 13/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the concerned workman is entitled to?"

2. In claim statement the workman pleaded that he was appointed as Junior Driller with respondent No. 3 i.e. ITD Cementation India and joined the service on 4.5.2005 and worked till 14.08.2008 when his services were retrenched. He was earning Rs. 8,000/- including overtime duties and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I.D. Act. His juniors have been retained in service and fresh appointments were also made. It is further pleaded that about 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent no. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No. 1. Respondent no. 2 i.e. ITDPCL submitted that the last drawn wages of the workman was Rs. 3175 and the workman was retrenched as per law. Respondent No. 3 i.e. ITD Cementation filed reply stating therein that respondent No. 3 engaged the workman being Sub-contractor of respondent No. 2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 8375/- through demand draft on 12.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd., deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to check the rules and regulations of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behalf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heared the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D. Act as the work is still going on. The workman is entitled to be reinstated in service with full back wages.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCL and the above ITDPCL engaged Sub-contractor i.e. ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 i.e. ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative for the Sub-contractor respondent No. 3 i.e. ITD cementation submitted that the workman was given Rs. 8375/- through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid his dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent No. 3 vide order dated 13.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WW1 stated that, that he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 8375 through demand draft on 12.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MW1 Neeraj Srivastava appearing on behalf of the respondent no. 3 deposed in cross-examination that work of the company was started in 2005 and finished in the year 2008 with respondent no. 2. It is specifically pleaded by the management/respondent No. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel for the workman that the managemen again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 13.08.2008. As nothing has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchment compensation and notice pay amounting to Rs. 8375 through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Joginder Pal vide order dated 13.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly.

11. The reference is answered accordingly. Central Govt. to be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
23.1.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 732.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मेनेजर, एण्ड ऑर्थर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 41/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/165/2010-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 732.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 41/2010) of the Cent. Govt. Indus. Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC, Bilaspur and their workman, which was received by the Central Government on 31/01/2014.

[No. L-42012/165/2010-IR(DU)]
P. K VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSDRIAL TRIBUNAL CUM-LAHOUR COURT-1, CHANDIGARH.**

Case No, ID 41. Reference No. L-42012/165/2010/IR(DU) dated 18.02. 2011

Shri Munshi Ram son of
Shri Dhani Ram,
Village, Siriun, P.O. Mandoh,
Tehsil Sunder Nagar, Mandi (HP). .....Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Electric Power Project.
   NTPC, VPO Barmana. Bilaspur.
2. Project Manager,
   Italian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper
   Teh. Sundernagar Mandi (HP).
3. Project Manager,
   M/S ITD Cementation India Ltd.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, PO Slaper,
   Teh. Sundernagar, Mandi (HP). ....Respondents

**APPEARANCES:**

For the Workman: Shri M.S Gorsi advocate

For the Management: Mr V.P. Singh. Hem Raj Sharma & Neeraj Srivastava

**AWARD**

Passed on:-23-01-2014

Central Govt. vide notification No, L-42012/165/2010/IR(DU) datad 18.02.2011 has referred the following dispute tlo this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Munshi Ram son of Shri Dhani Ram, Village Siriun, Tehsil Sunder Nagar, Mandi (HP) by the Project Manager

M/s ITD Cementation India Ltd., Village Kyan P.O. Slapper, Tehsil Sundernagar, District Mandi vide order dated 13/08/2008 without following the principle of last come first go is legal and justified? If not, what relief the concerned wokman is entitled to?

2. In claim statement the workman pleaded that he was appointed as welder with respondent No 3 i.e. ITD Cementation India and joined the service on 13-05-2005 and till 14.8.2008 when his services were retrenched. He was earning Rs. 8,000/- including overtime duites and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I D. Act. His juniors have been retained in service and fresh appointment were also made. It is further pleaded that about 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act. It is prayed by the workman that he may be reinstated in services with full back wages and other benefits.

3. All the three respondents filed reply in which respondent No. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No.l. Respondent no.2 *i.e.* ITDPCL submitted that the last drawn wages of the workman was Rs. 3605 and the workman was retrenched as per law Respondent no.3 *i.e.* ITD Cementation filed reply stating therein that respondent no.3 engaged the workman being Sub-contractor of respondent no.2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed far the dismissal of the reference.

4. In evidence, workman filed his affidavit. All The respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs. 9450 through demand draft on 12.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd. deposed during cross-examination that their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the 1TDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used of check the rules tmd regulation of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behalf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heard the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D Act as the work is still going on. The workman is entitled to be reinstated in service with full back wages.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contiact to ITDPCL and the above ITDPCL engaged Sub-contractor i.e. ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No. 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative or the Sub-contractor respondent No. 3 *i.e.* ITD cementation submitted that the workman was given Rs. 9450 through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid fiis dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent no.3 vide order dated 13.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WWI stated that thai he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 9450 through demand draft on 12.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MWI Neeraj Srivastava appearing on behalf of the respondent No. 3 deposed in cross-examination that work of the company was started in 2005 and finished in the year 2008 with

respondent No. 2. It is specifically pleaded by the management/respondent No. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel lor the workman that the management again started work by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 13.08.2008. As nothing has been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retrained and as to how the management violated the principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act particularly when he was paid retrenchment compensation and notice pay amounting to Rs. 9450 through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Munshi Ram *vide* order dated 13.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly,

11. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
23.1.2014 S.P. SINGH Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 733.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मेनेजर, एण्ड ऑर्थर्स, कोल दम हाइड्रो इलेक्ट्रिक प्रोजेक्ट, नेशनल थर्मल पॉवर कारपोरेशन, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 42/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[स॰ एल-42012/168/2010-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 733.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 42/2010) of the Cent. Govt. Indus. Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager & Others, Kol Dam HEP, NTPC Bilaspur and their workman, which was received by the Central Government on 31/01/2014.

[No. L-42012/168/2010-IR(DU)]
P.K VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENLRAL GOVT. INDUSDRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH**

Case No. I.D. 42 of 2010 Reference No. L-42012/168/2010/IR(DU) dated 14.02. 2011.

Paras Ram, S/o
Sh. Beli Ram, Village Jandrah,
P.O. Malohm, Tehsil Sunder Nagar,
Mandi (HP). .....Applicant

*Versus*

1. The General Manager,
   Kol Dam Hydro Elecric Power Project.
   NTPC, V.P.O. Bamana. Bilaspur.
2. Project Manager,
   ltalian Thai Development Co. Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, P.O. Slapper
   Teh. Sundernagar Mandi (HP).
3. Project Manager,
   M/s ITD Cemeniation India Lid.,
   Kol Dam Hydro-Electric Power Project,
   Village Kayan, P.O. Sppaper,
   Teh. Sundernagar, Mandi (HP). ... Respondents

**APPEARANCES**

For the Workman: Shri M.S. Gorsi Advocate

For the Management: Mr V.P. Singh. Hem Raj Sharma & Neeraj Srivastava

**AWARD**

Passed on:-23-01-2014

Central Govt. *vide* notification No. L-42012/168/2010/IR(DU) datad 14.02.2011 has referred the following dispute to this Tribunal for adjudication:

**Term of Reference:**

"Whether retrenchment of services of Shri Paras Ram S/o of Shri Beli Ram Vill. Jandrah, P.O. Maloh, Tehsil Sundernagar, Distt. Mandi (HP) by the Project Manager M/s. ITD Cementation India Ltd. Mandi *vide* order dated 13/08/2008 without following the principle of the last come first go is legal and justified? If not, what relief the above workman is entitled to from the above Employer?"

2. In claim statement the workman pleaded that he was appointed as Junior Driller with respondent No 3 i.e. ITD Cementation India and joined the service on 15.11.2005 and worked till 14.08.2008 when his services were retrenched. He was earning Rs. 8,000/- including overtime duites and his work and conduct was satisfactory. It is pleaded by the workman that the workman was retrenched in violation of Section 25G and 25H of the I D. Act. His

juniors have been reiained in service and fresh appointment were also made. It is further pleaded that about 7,000 workers are still working day night on the project. It is also pleaded by the workman that the management did not obtain the permission of the Govt. for retrenchment which is violation of Section 25N of the I.D. Act It is prayed by the workman that he may be reinstated m services with full back wages and other benefits.

3. All the three respondents filed reply in which respandent no. 1 NTPC pleaded that it is not the appointing authority of the workman and the claim petition has been filed just to harass the respondent No.l. Respondent No.2 *i.e.* ITDPCL submitted that the last drawn wages of the workman was Rs. 3175/- and the workman was retrenched as per law Respondent No.3 *i.e.* ITD Cementation filed reply stating therein that respondent No.3 engaged the workman being Sub-contractor of respondent No.2 and as the work came to an end retrenchments were made strictly in accordance with the law and Section 25G and Section 25H are not attracted. The management prayed for the dismissal of the reference.

4. In evidence, workman filed his affidavit. All the respondents management also filed affidavit in evidence and documents. The workman was examined and cross-examined. During cross-examination the workman admitted that he was paid Rs.7938/- through demand draft on 12.08.2008 on account of retrenchment compensation and notice pay. All the three witnesses of the management were examined and cross-examined by the learned counsel for the workman. Shri Neeraj Srivastava deposing on behalf of the ITD Cementation India Ltd., deposed during cross-examination thai their company started in Kol Dam in the year 2005 and finished in the year 2008. Shri Hem Raj Sharma deposing on behalf of the ITDPCN deposed that about 7/08 Sub-contractors were working at the relevant time and all were license holder. It is further deposed by the witness that they used to check the rules and regulation of the Sub-contractions and Govt. agencies also used to check and when new work was assigned to ITD Cementation, the present reference was pending in this Tribunal. Witness Pankaj Kumar appearing on behalf of NTPC deposed that about 7/8 contractors working in the management during relevant period and total work forces was around 4,000 with different contracting agencies and the work is about to complete.

5. I have heard the learned counsel for the parties and gone through the evidence and record of the case.

6. Learned counsel for the workman during arguments submitted that the management of ITDC Cementation again started the work in the year 2010 and the workman was not afforded opportunity to re-employment. Therefore the management violated the provisions of Section 25G and 25H of the I.D Act as the work is still going on. The workman is entitled to be reinstated in service with full back waged.

7. On the other hand learned counsel for the NTPC submitted during arguments that the workman was employee of the Sub-contractor and NTPC given the contract to ITDPCL and the above ITDPCL engaged Sub-contractor *i e.* ITDC Cementation of which the employee workman was working and the workman was legally retrenched as per law.

8. Learned representative for the Respondent No 2 *i.e.* ITDPCL submitted that contract of ITD Cementation was for the period 2005 to 2008 and on completion of work, workman was retrenched as per provisions of I.D. Act 1947.

9. Learned representative or the Sub-contractor respondent No 3 *i.e.* ITD cementation submitted that the workman was given Rs 7938/- through demand draft on account of retrenchment compensation and notice pay and as the contract come to end, therefore, the workman was retrenched in the year 2008 and paid fiis dues. As regard the work started in 2010, it is submitted by the learned representative that new contract was signed in 2010 and the work is about to complete now and the present reference was pending in this Tribunal when the new contract was signed and no junior was retained at the time of retrenchment and also no name was disclosed by the workman. At the time of retrenchment principle of last come first go was adopted. Therefore, the workman is not entitled to any relief and the reference deserved to be answered against the workman.

10. The case of the workman is that he was retrenched from service by respondent No.3 *vide* order dated 13.08.2008 without following the principle of last come first go. Whereas all the three respondent management denied the claim of the workman. The workman in his cross-examination when appeared as WWI stated that he was not given any notice for retrenchment. Workman in cross-examination admitted that he was paid Rs. 7938/-through demand draft on 12.8.2008 on account of retrenchment compensation and notice pay. The workman never pleaded nor named any junior to him was retained in service. MWI Neeraj Srivastava appearing on behalf of the respondent No.3 deposed in cross-examination that work of the company was started in 2005 and finished in the year 2008 with respondent No. 2. It is specifically pleaded by the management/respondent No. 3 that all the work force was retrenched on the completion of contract in 2008. The submission of the learned counsel for the workman that the management again started uoik by a new contract in 2010 and workman was not called for employment is of no help as the term of reference relates to retrenchment order dated 13.08.2008. As nothing hav been pleaded by the workman nor any name has been provided that during the retrenchment in the year 2008 on completion of contract any junior to the workman has been retrained and as to how the management violated rhe principle of last come first go. As the workman failed to establish that there is any violation of any provisions of I.D. Act, particularly when he was paid retrenchment compensation and notice

pay amounting to Rs. 7938/- through demand draft as admitted by the workman, in his cross-examination. Therefore, it is held that retrenchment of Shri Paras Ram *vide* order dated 13.08.2008 is legal and justified and the workman is not entitled to any relief whatsoever from the employer. The reference is answered accordingly,

11. The reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh. S.P. SINGH, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 734.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेशन कमांडर, वायु सेना, एंड ऑथर्स, जोधपुर के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एंव श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या सीजीआईटीए 133/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं. एल-40012/75/2005-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 734.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGITA133/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Superitendent of Post Office, Jamnagar and their workman, which was received by the Central Government on 31/01/2014

[No. L-40012/75/2005-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

**PRESENT:** Binay Kumar Sinha,

Presiding Officer, CGIT Cum Labour Court,

Ahmedabad, Dated 25th November, 2013

**Reference: (CGITA) No-133/2006**

Superintendent of Post Office,
Dept. of Posts,
Jamnager Division,
Jamnagar -361001 ...first Party (Management)

**And**

Their Workman
Shri Suresh K. Chauhan
Kantol, Tal. Kautiyana,
Porbandar .....Second Party (Workman)

For the First Party Shri Prakashchandra M. Rami, A.G.P. (Labour and Industrial Court)

For the Second Party: None

**AWARD**

The central Government/ Ministry of Labour, New Delhi by its Order No. 40012/75/2005 [IR(DU)] dated 01.06.2006 in exercise of the powers conferred by clause (d) of section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act , 1947 referred the dispute for adjudication to this Tribunal on terms of reference in the Schedule:

**SCHEDULE**

"Whether the action of the management of department of post, Jamnagar division in not paying retrenchment compensation, while terminating the services of Shri S.K. Chauhan, ED BPM, Beraja Bhalsan BO, is legal and justified? If not, to what relief the workman is entitled to?"

2. The workman, 2nd Party appeared on notice filed vakilpatra in favour of Shri Girishkumar A Prajapati, Advocate and filed statement of claim on 12.12.2006 (Ext.5) stating therein that he was appointed on the post of ED BPM at Beraja Bhalsan by the 1st Party on 02.06.2000 and he continued in employment up to 26.03.2002. He worked for more than 240 days in each calendar year. But he was terminated from the service in violation of section 25B of the I.D. Act without giving notice, or one month notice pay and retrenchment compensation. He claimed for the relief of reinstatement with back wages and consequential benefits.

3. The management of 1st Party also appeared, executed Vakilpatra in favour of Shri P.M. Rami, Advocate (A.G.P. Labour and Industrial Courts) on 15.02.2007 and filed written statement (Ext. 12) on 03.07.2009 furnishing its copy to the workman side. The contention of the 1st' Party is that the reference is not maintainable, the workman was not performing duty on permanent post on 02.06.2000 rather temporary order of appointment was given by extra Departmental branch post master to perform duty at Beraja Bhalsan post office The workman S.K. Chauhan never completed 240 days of work in calendar year. The case of the 1st Party in that for branch post master post at Beraja Bhalsan advertisement was given by Supt. of Post Offices, Jamnagar and workman S.K. Chauhan and B.K, Chudasma also applied and according to merit B.K. Chudasma secured more marks in SSC Examination. So he was given appointment and workman S.K Chauhan was terminated. The reference is therefor, liable to be dismissed.

4. The case was being adjourned for leading evidence by the workman (2nd Party) but the 2nd Party upon whom onus was to prove his case as per claim statement, absent on dates since pretty long time. The management of 1st Party by filing pursis (Ext.17) on 25.11.2013 prayed to dismiss the reference.

5. The workman S.K. Chauhan by his such negligence in not attending the case on dates and not leading evidence in support of his case appears to have lost interest in this case. So the claim of the workman as per statement of claim (pleadings) without supportive evidence has no leg to stand.

As such the reference is dismissed. The terms of reference is answered in favour of the 1st Party (management of post) that its action in not paying retrenchment compensation while terminating the service of Shri S.K. Chauhan ED B.P.M. Beraja Bhalsan is legal and justified.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 735.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, आर्डिनेंस फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एंव श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/20/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/11/2004-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 735.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/20/2005) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commander Works Engineers, Military Engineering Service, Jabalpur and their workmen, which was received by the Central Government on 02/02/2014.

[No. L-40011/11/2004-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/20/2005
PRESIDING OFFICER: SHRI R.B.PATLE

The Secretary,
MES Employees Union,
Jabalpur Area, P-324/5, MES Colony,
Near OM Vidya Mandir School,
Bhopal (MP) ....Workman/Union

*Versus*

The Commander Works Engineers,
Military Engineering Services,
Sultania Infantry Lines,
Bhopal (MP) ....Management

**AWARD**

(Passed on this 20th day of January 2014)

1. As per letter dated 20.1.2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14011/11/2004-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Commander Works Engineer, MES Bhopal in awarding punishment of penalty of reduction to a lower stage from Rs. 4350/- to Rs. 4270/- in the pay scale without cumulative effect is just and legal? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. 1st Party workman failed to participate in the reference proceeding. Statement of claim is not filed on his behalf. The case was fixed for filing exparte Written Statement of 2nd Party. Despite of several chances granted, 2nd Party also failed to file Written Statement. Both parties failed to participate in the reference. Both parties are proceeded without Statement of Claim, Written Statement. It appears parties are not interested in prosecuting the dispute under reference.Therefore Award is passed as under:—

> "1st Party workman failed to prosecute reference, therefore the claims under reference cannot be allowed in favour of the workman."

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 736.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, आर्डिनेंस फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्यगिक अधिकरण एंवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/75/95) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[सं॰ एल-14012/11/94-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2004

**S.O. 736.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (LD No. CGIT/LC/R/75/95) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Ordinance Factory, Jabalpur and their workman, which was received by the Central Government on 02/02/2014.

[No. L-14012/11/94-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, JABALPUR**

No. CGIT/LC/R/75/95

PRESIDING OFFICER: Shri R.B. Patle

Shri Mangal Prasad Rajput,
R.B.274. Near Micro Tower,
In front of Allahabad Bank,
Civil Lines, Jabalpur. ....Workman

*Versus*

General Manager,
Ordnance Factory,
Khamaria, Distt. Jabalpur .....Management

**AWARD**

(Passed on this 22nd day of January, 2014)

1. As per letter dated 4.5.95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of 1. D. Act, 1947 as per Notification No. L-14012/11/94-IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Ordnance Factory, Khamariya Jabalpur in terminating the services of Shri Mangal Prasad. Ex-mazdoor *w.e.f.* 4.9.78 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Statement of Claim is filed by workman. Case of workman is that he was performing duty of machinist in establishment of 2nd Party. Initially he was engaged as labour from 15.11.1961 holding T. No. 570. He was promoted as machinist Grade-C in 1963 against vacant post. While performing his duties as machinist, he was injured in both eyes suffered blindness. He further submits out of illiteracy and ignorance, he did not report about incident. He remained silent. He has not taken remedial measures. Workman was undergoing medical treatment of his eyes since he was leading towards blindness. That fact of medical treatment and sickness was known to the management.Workman had become completely blind by the date his services were terminated. That management to avoid payment of compensation for loss of earning capacity, terminated his service on false pretext of long absence from duty. Workman was not issued with showcause notice. He was not given opportunity for hearing, no enquiry was conducted against him. That after 17 years of service, he was terminated by management from 4.9.78. That his termination from service is illegal and deserves to be quashed.

3. Workman further submits that before termination, no chargesheet was issued to him, no enquiry was conducted by management. Termination of services amounts to retrenchment under I.D. Act, the termination from service is in violation of Section 25-G of I.D. Act,. Management has employed fresh hands after his termination. That the workman was completely blind. He was terminated. He has handed over all his papers to Mr. Rajak, Union Leader. Mr. Rajak met with accidental death while accompanying marriage party. The papers could not be procured back from deceased Rajak which caused delay in persuing the remedy. On such grounds, workman is praying to quash order of his termination and he be reinstated in service with consequential benefits.

4. 2nd Party filed Written Statement at Page 81 to 85. 2nd Party submits that workman Shri Mangal Prasad was its employee. He was irregular in attendance and indulged in gross misconduct. For such misconduct, penalty of withholding of increment for a period of two years with cumulative effect was imposed. In 1976, workman engaged in similar misconduct of irregular attendance. Penalty of reduction in pay by one stage for two years with cumulative effect was imposed on him. He continued to indulge in misconduct. The workman did not reform. On 3rd occasion, penalty of removal from service was imposed on 4.9.78 after examining the report of Enquiry. The charges were framed under rule 14 of CCS CCA Rule 1965. Workman was provided opportunity to defend himself to establish his innocence. Disciplinary proceedings were held following rules. Action of the management is justified. The habitual nature of irregularities tantamount ing to gross misconduct-conduct unbecoming of a Govt. servant. Workman was terminated long back in 1978. He has not submitted representation or appeal for reinstatement. The dispute is raised belatedly is barred. The dispute is not tenable. It is reiterated that for the proved misconduct, workman was terminated from service. His claim is barred, 2nd Party claims for rejection of claim of workman.

5. My learned predecessor vide order dated 16.7.12 held enquiry conducted against workman is vitiated for want of pleadings. The management was not entitled to prove misconduct in Court. Management has submitted application for proving misconduct. *Vide* detailed order dated 10.10.13, the application was rejected.

6. Considering pleadings between parties and finding on preliminary issue that enquiry conducted against workman is vitiated, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|---|---|---|
| (i) | Whether the action of the management of Ordnance Factory, Khamariya Jabalpur in terminating the services of Shri Mangal Prasad. Ex-mazdoor *w.e.f.* 4.9.78 is legal and justified? | In Negative |
| (ii) | If not, what relief the workman is entitled to?" | As per final order |

**REASONS**

7. Workman is challenging legality of his termination contending that he was not given opportunity of hearing, no enquiry was conducted whereas the management has pleaded that for irregular attendance, chargesheet was issued to the workman, he was given opportunity for his defence to establish his innocence. Workman was removed from service from 4.9.78. The enquiry is found vitiated. Management was not given opportunity to prove misconduct of workman for want of pleadings. Application filed seeking permission to prove misconduct has also been rejected. Affidavit of evidence of management's witness Shri Ashish Bhattacharjee, Jr. works Engineer is filed on the point of enquiry conducted against workman. The preliminary issue is decided by my predecessor and found enquiry against workman is vitiated. Said order has received finality. As enquiry conducted against workman is vitiated for the reasons discussed by my predecessor, the punishment of removal from service imposed against workman cannot be said legal. As said order has been passed on basis of report, the enquiry is vitiated. Therefore I record my finding in Point No. l in Negative.

8. **Point No. 2—** In view of my finding in Point No. l, the enquiry is vitiated, order of punishment of removal from service cannot be sustained. The question arises to what relief the workman is entitled? Workman was dismissed from service on 4.9.78. The reference is made in 1995 after lapse of about 17 years. Workman has pleaded that he had handed over documents about his over all his papers to Mr. Rajak, Union Leader, Mr. Rajak met with accidental death while accompanying marriage party. The papers could not be procured back from deceased Rajak which caused delay . Written Statement filed by management is absolutely silent on above facts. Workman died on 31.8.2000 leaving LRs, his widow, 6 sons and 3 daughters. Absolutely no evidence is adduced by parties whether deceased workman was in gainful employment, what was the age of deceased workman at the time of removal form service. As per pleadings, workman joined service in 1961 as General Mazdoor and he was removed from service in 1978 after about 17 years. The enquiry is vitiated. The misconduct of workman is not proved. Considering such facts, in my considered view, compensation Rs. 2 Lakh would be appropriate to meet the ends of justice in addition to pensionary benefits to his widow as per rules. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:—

(1) Action of the management of Ordnance Factory, Khamariya Jabalpur in terminating the services of Shri Mangal Prasad. Ex-mazdoor *w.e.f.* 4.9.78 is not proper.

(2) IInd party is directed to pay compensation Rs. 2 Lakh to LRs of deceased workman.

(3) IInd party is directed to allow pension to the widow of deceased workman as per rules.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization,

R. B. PATLE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

**का॰आ॰ 737.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, गवर्नमेंट ओपियम एंड अल्कालॉयड फैक्ट्री, नीमुच के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/107/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/25/2000-आईआर(डीयू)]
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

**S.O. 737.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/LC/R/107/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Govt. Opium and Alkaloid Factory, Neemuch and their workman, which was received by the Central Government on 02/02/2014.

[No. L-42012/25/2000-IR(DU)]
P. K.VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/107/2003**

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Abdul Hameed,
S/o Shri Munna Choudhary,
Hammal Mohalla,
Juna Baghana,
Neemuch (MP) ....Workman

*Versus*

General Manager,
Govt. Opium and Alkaloid Factory,
Neemuch. .....Management

**AWARD**

(Passed on this 22nd day of January 2013)

1. As per letter dated 6-6-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section 10 of I.D. Act, 1947 as per Notification No. L-42012/25/2000-lR(DU). The dispute under reference relates to:

> "Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Abdul Hameed S/o Shri Munna Choudhary w.e.f. 10-7-92 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties, 1st Party Shri Abdul Hameed S/o Abdul Aziz has filed statement of claim at Page 2/1 to 2/5. The reference relates to termination of services of Shri Abdul Hameed S/o Shri Munna Choudhary whereas statement of claim is filed on behalf of Shri Abdul Hameed S/o Abdul Aziz. Thus the inherent irregularity is committed in filing the statement of claim. 1st Party workman has pleaded that he was initially appointed as casual worker. His services were terminated from 6-2-93 without supplying order of termination. That he was continuously working more than 240 days in each of the calendar year. That 1st Party submits that there were permanent post available in establishment of IInd Party. Other colleagues were deliberately not classified with motive to deprive. The workman was classified as part time/temporary employee. That junior employees were continued in service. Workman was not given notice of termination. Notice pay was not paid to him. Termination of his services was in violation of Section 25-K of I.D. Act. More than 100 employees working in establishment of IInd party. Establishment is covered under Chapter V-B of the I.D. Act. The services of the 1st Party workman are terminated without obtaining permission of Government under Section 25 of I.D. Act. Establishment of IInd Party is not seasonal. The termination of services of workman is illegal for violation of Section 25-F, G, N of I.D. Act. On such ground, he prays for reinstatement with consequential benefits.

3. IInd Party filed Written Statement at Page 7/1 to 7/2. IInd party submits that the workman was engaged as daily wager. He has rendered 240 days continuous service as per his pleadings. Workman has also prayed for reinstatement. IInd Party management submits that for work involved in the production of opium, management is required to engage services of casual labour for short and specified period. That casual labours are never employed and their services have been obtained entirely on necessity and availability of work. Workman never rendered services for more than 240 days in a year. That Section 25-F of I.D. Act is not necessary for removal of services. That in the case of Casual Labour, his services commences in the morning of the day he reports to the assigned work, it automatically comes to end at the end of the day. The services of workman were taken on need basis. He was not on permanent nature of work, recruitment rules were not followed. IInd party prays for rejection of the claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|---|---|---|
| (i) | Whether the action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Abdul Hameed, S/o Shri Munna Choudhary w.e.f. 10-7-92 is justified? | In Affirmative |
| (ii) | If not, what relief the workman is entitled to?" | Workman is not entitled to relief prayed by him. |

**REASONS**

5. Present matter relates to the legality of termination of workman. However the 1st Party workman is unfortunate. His case is not properly submitted by his counsel. The reference relates to termination of services of Shri Abdul Hameed S/o Shri Munna Choudhary whereas statement of claim is filed on behalf of Shri Abdul Hameed S/o Abdul Aziz. Statement of claim is well drafted in English, signed by Shri Abdul Hameed S/o Abdul Aziz. Inception of the proceeding is in wrong name. Written Statement is filed in the matter without noting the said infirmity even by the IInd Party, The affidavit of evidence is filed in name of Abdul Hameed S/o Shri Munna Choudhary on 9-2-99. He was cross-examined by IInd Party. Workman in his cross-examination says advertisement was given for the post, his name was sponsored through Employment Exchange. He has produced certificates about his appointment. He was not allowed to complete 240 days by IInd Party. He had worked for the days shown in the documents produced by him. Documents Exhibit W-l(A)to W-l(I) shows working days 178 days in 1984, 111 days in 84-85, 86 days in 1986, 33 days in 1986, 94 days in 1987, 87 days in 1987, 55 days in 1991, 35 days in 1992. He has also produced Exhibit W-2, W-2(A), (B), W-3, The period of working is shown in the documents. All those documents are bearing name of Shri Abdul Hameed S/o Abdul Aziz. Thus the statement of claim is not consistent with the documents filed by the workman. Management has not adduced evidence. Claim of workman cannot be upheld for the reason of inconsistency. Statement of claim filed by different person and the documents and evidence are produced by Abdul Hameed S/o Shri Munna Choudhary. Thus inherent irregularities are not explained by the workman. Documents are not produced to justify irregularity. As per evidence in cross-examination of workman, he has not completed 240 days service. Therefore Section 25-F of I.D. Act is not violated.

6. Learned counsel for workman Miss R. Nair relies on ratio held in—

> "Case of Smt. Sunita Gupta versus Nagar Palika Parisad, Sabalgarh and another reported in ILR(2010) M.P. 1600. Their Lordship dealing with oral termination of workman. Petitioner worked for more than 12 months from date of termination. Held it is not necessary employee must have in employment

during the preceding 12 calendar months. Their Lordship dealing with Section 25-B of I.D. Act held it is sufficient if the workman has actually worked for not less than 240 days in a period of 12 months for violation of Section 25-F, petitioner was held entitled for reinstatement."

In the present case, infirmity discussed above that Statement of Claim is submitted by different persons, evidence is adduced by Shri Abdul Hameed, S/o Shri Munna Choudhary cannot be reconciled. Therefore I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:—

(1) Action of the management of General Manager, Govt. Opium and Alkaloid Works in terminating the services of Shri Abdul Hameed, S/o Shri Munna Choudhary w.e.f. 10-7-92 is legal,

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 738.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 45/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/02/2014 को प्राप्त हुआ था।

[सं॰ एल-12011/53/2010-आईआर(बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 738.**—In pursuance oi Section 17 of the Industrial Disputes Act, 1947 (14 of 1947). the Central Government hereby publishes the Award (Ref. No. 45/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 14/02/2014.

[No. L-12011/53/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI**

**Present :** Shri Harbansh Kumar Saxena

**ID No. 45/2011**

Sh. Ratanmani Uniyal

*Versus*

State Bank Of India

**No Dispute Award**

The Central Government in the Ministry of Labour *vide* notification No. L-1201 l/53/2010-IR (B-I) Dated 23/05/2011 referred the following industrial Dispute to this tribunal for the adjudication :—

"Whether the action of the management of State Bank of India, Dhutto, Tehari Garwal in terminating the services of Shri Ratanmani Uniyal S/o Shri Rama Nand without complying with the provision of section 25F, G, H of Industrial Dispute Act, 1947, is legal and justified ? To what relief the workman is entitled ?"

On 06.07.2011 reference was received in this tribunal. Which was register as I.D No. 45/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Ratanmani Uniyal not filed claim statement but management in response to reference filed response on 21st day, November wherein it mentioned as follows:—

**Subject:**— Reference I.D. No. 45/2011

A. That the present references has been raised by the claimant workman with regard to his terminiation of his services without following the provisions of Section 25F of the Industrial Disputes Act, 1947, That though the reference has been filed by the claimant till date. The present reply is being filed pursuance to the order dated 18/10/2013 passed by the Hon'ble Court.

B. That the Management submits that the order-sheet of the Ld. Tribunal would show that various dates have been fixed for filing of the claim statement and various notices have been issued to the claimant to appear before the limited Ld.Tribunal and file his claim statemant. Since the claimant had not appeared before the Hon'ble court the management bank has been directed to file its reply. The present reply is being filed pursuant to the order of the Hon'ble court dated 18.10.2013 and management reserves its right to file a detailed reply in case any statement of claim is filed by the claimant at any subsequent stage.

C. That the management submits that there was no employer - employee relation between the claimant and the management and the claimant was never appointed by the management bank .In fact , the claimant had work from 07.12.1989 to 10.09.1991 for Rs 100/- per month on temporary basis for sweeping the branch premises for approximatly 1/2 hour daily at the Ghuttu Branch of the management bank. The approximate area of the branch was about 1150 sq. Ft. And the claimant did not work for more than 3 hour a week in the small premises of the management bank.

D. That the management submits that as per the Circular Note dated 22.05.1994 one part time sweeper was sanctioned for the branch for at least 1/3 scale wages

at all the regular branches which were in existance / operation on or before 31.12.1993 and the same was made applicable w.e.f. 01.01.1994 .As the claimant was not working at the branch on 31.12.1993 he was not eligible and his name was not considerd. That during that period Shri Jabbar Singh and Shri Vikram worked as sweeper at the branch The claimant had again started working in the bank w.e.f. January ,1994 at Rs 190/- per month. However, it is stated that the Ghuttu Branch *vide* their letter dated 09.11,1993 addressed to the Employment officer Employment exchange, Tehri Solicited names of the candidates belonging to SC/ST category registered at the Employement Exchange for the post of sweeper at the branch .The Employment Exchange at Tehri did not sponsor any name. Shri Uniyal belongs to the general category,

E. That the management had thereafter advertised the vacancy for part time sweeper in its branches for Tehri District in the year 2003 and advertisement for recruitment was published in March , 2003 whereby the age limit criteria for the general category candidates was between 18 to 28 Years and there was a relaxation of 5 years for SC/ST candidates . A chance was also given to the claimant to apply for the same but the age of Shri Uniyal who was a general category candidate was about 33 years on the date of the said advertisement / vacancy and thus , he was not eligible for the said post -

F. It was respectfully submitted that the engagement of the claimant in the respondent bank was on temporary basis for sweeping the branch premises for about 1/2 hour daily and he was engaged by the respondent bank for any other purpose.

G. That the Hon'ble Apex Court in the Case of Secretary, State of Karnataka Vs Uma Dcvi reported in 2006 4 SCC Page 1 has held that the employee appointed by the states or its instrumentality in the capacity of daily wagers / temporary appointment /part time appointment /contractual appointments cann't claim regularization as matter of right on the basis of the fact that the employee had continued his services on that status for a long period.

H. The management further states that regularization of the temporary employees is only possible if they fulfill eligibility criteria and the recruitment rules . The management bank organizes recruitment process for recruitment of parmanent employees. The claimant had only rendered services on temporary basis for cleaning of the branch premises hence he was not eligible for regularized.

I. The management further submits that the claimant had also approached the Assistant Labour Commissioner (C), Dehradun and a notice was also received by the management bank from the office of the ALC(C), Dehradun and he had not appeared on consecutives 4 dates and the ALC(C). Dehradun vide its order dated 06.03.2013 had rejected the demand observing that the claimant is not interested in pursuing his matter.

J. That the claimant has also not perused, its case before the Ld. Tribunal inspite of notice and inspite of being given numerous opportunities to file its statement of claim .

Wherein the management prayed as follows : —

It is therefore ,most respectfully prayed the present reference may kindly be answered in favour of the management since the claimant is not interested in pursuing his case .

In these circumstances there remains no dispute between Claimant/Workman & Respondent.

Had it been workman /Claimant has filed Claim Statement, Rejoinder etc, and come forward to proceed further.

In these circumstances it is a fit case for passing No Dispute Award. Reference in decided in favour of Management and Against Workman-No Dispute Award is accordingly passed.

Dated : 16.1.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 739.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड, रतलाम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/62/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/12/2013 को प्राप्त हुआ था।

[सं॰ एल॰-40012/319/2001-आई आर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 739.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/62/2002) of the Central Govt. Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BSNL, Ratlam and their workman, which was received by the Central Government on 23/12/2013.

[No. L-40012/319/2001-IR(DU)]

P. K VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**No. CGIT/LC/R/62/2002**

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Gajadhar Singh,
S/o Shri Hemsingh Village Kudkela,
Tehsil Dharmajgarh
Raigarh (Chhattisgarh) .....Workman

*Versus*

Sub-Divisional Officer (Telegraphs),
BSNL, Raigarh, Chhattisgarh

Sub-Divisional Officer (Phones),
BSNL, Raigarh, Chhattisgarh

General Manager,

BSNL, Telephone Exchange,

Bilaspur (Chhattisgarh) .....Managerments

**AWARD**

(Passed on this 13th day of September, 2013)

1. As per letter dated 1.4.2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/319/2001-IR(DU). The dispute under reference relates to:

> "Whether the demand of Shri Gajadhar Singh, Ex-Casual Labour from the management of the Telecom Department (BSNL), Raigarh for reinstalment and his regularisation in service is justified? If not, to what relief the workman is entitled and from which date?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted Statement of Claim at page 2/1 to 2/3. The case of 1st party workman is that he had worked as casual labour on muster roll with IInd Party in 1990. He had worked during 1980 to 1983, 1984 to 1987 and in 1990. He claims to have worked more than 240 davs during each of the calendar year. That Smt. Budhiarin Bai and Pratapi Bai were part time labour in establishment of IInd Party in 1988. They were directed to be given temporary status as per order in Original Application No. 509/93 under the Departmental Regularisation Scheme of 1989.

3. That several casual labours were working in IInd Party till 1995. None of them were regularized. Rajesh Kumar Kunwar and Keshav Prasad working under the IInd Party filed Original Application No. 96/95. Seeking regularization. Applicant had filed original application 467/97 before CAT, Jabalpur. The directions were given to the applicant to approach appropriate forum. Applicant submits that case of Rajkumar and Keshav Prasad is identical and therefore he is entitled to similar relief of temporary status/regularization.

4. IInd purty filed Written Statement at Page 10/1 to 10/4. Claim of Ist Party is opposed. That workman has raised industrial dispute alleging that his service were terminated without following due procedure under I.D. Act. That the respondent engaged workers for target works at various placed in rival, the workers were engaged on muster roll for specified period and works like for erecting lines and wires, laying under ground cables, dismantling of lines and wires, providing long distance connection etc. on daily basis etc. The workers were employed on contract basis for specified period therefore they were never engaged on regular basis against regular sanctioned post. That after expiry of stipulated work, the services of casual labours were automatically terminaied. They were again deployed to the work under mustering officer when work was available. The department had framed policy for conferring of temporary status to casual workers known as Casual Labours Grant of Temporary Status and Regularisation Scheme 1989. The conditions were that the employee should be

(a) engaged prior to 30.3.1985,

(b) Continuing as casual worker on 7.11.1989,

(c) Have completed 240 days in a year

The scheme was extended as per order dated 25-6-93. The required criterias are—

(a) Having been engaged between 30.3.1985 to 22.6.1988,

(b) Still continuing in the date of respective orders,

(c) Not remained absent for more than 365 days w.e.f. the issue of respective orders.

5. IInd party submits that except in 1987, workman had not completed 240 days service during the period of service. He is not fulfilling conditions for temporary status. Therefore he is not entitled for regularization of service. That Smt. Budhiarin and Smt. Pratapi Bai was in employment for longer period. The case of Rajesh Kumar and Keshav Prasad were also not similar. On such grounds. IInd Party submits that Ist Party workman cannot claim reliefs as similar relief is granted to above workers. On such grounds, IInd Party prays for rejection claim of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|---|---|---|
| (i) | Whether the demand of Shri Gajadhar Singh, Ex-Casual Labour from the management of the Telecom Department (BSNL), Raigarh for reinstatement and his regularisation in service is legal? | In Negative |
| (ii) | If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected?" |

**REASONS**

7. As per terms of reference, Ist Party workman is challenging legality of his termination. He is also claiming regularization in service. However his statement of claim is fully devoted for regularization as per the casual labours regularisation scheme.

8. IInd Party had denied claim of Ist Party contending that he is not fulfilling eligibility criteria. The affidavit of evidence is filed by workman. He has stated that he had worked for 303 days during 1980 to 1983, 420 days from 1984 to 1987, 207 days from 1987 to 1988, 167 days from July 1987 to Dec-1987 and 177 days during 1988. That he was required to work in the department in 1980. That he had completed 240 days continuous service preceding one year from 31-12-88. He has further stated that his services were terminated without notice, retrenchment compensation was not paid. He was not granted temporary status as per the scheme.

9. In his cross-examination, workman says he had left service in December 1998. That he was working as labour in BSNL. His name was in muster. He was paid wages. He had not received appointment letter. That he was working on all 30 days of the month. He admits that working days shown in Para-2 of his affidavit is six blocks is correct.

10. Management's witness Basant Xalxo in his affidavit of evidence has stated the working days of Ist Party workman from 1980 to 1988, in 1987 working days of workman were 315 days, till October 1998, working days were 177. That there is no provision of regularization of casual workers directly. Unless temporary status is concurred on him. In his cross-examination, management's witness claims ignorance whether the entries of attendance was marked in the muster roll. He admits contents of para-6 that casual labours in muster roll was taken.

11. In present case as workman has admitted that he had left service in 1988 there was no question of giving notice under Section 25-F as argued by counsel for management.

12. Next question remains whether the workman is entitled for regularisation under the scheme of 1989. As per evidence in cross-examination of workman, he had left the job in December 1988. The scheme was introduced from 7-11-89. The copy is produced on record. The scheme prescribes various criterias for extending initials for temporary status to employees completing 240 days service as casual labour. The conferment of temporary status on a casual labour would not involve any change in his duties. Scheme also clearly provides that the employee is not entitled for casual status. Their services are terminated following conditions laid down in I.D. Act 1947. Though evidence on record shows that workman had completed more than 240 days service in 1987, he himself left the service in December, 1988 before the scheme lor regularization of casual employees was introduced. The scheme cannot be given retrospective effect for giving temporary status to the workman, Therefore, he is not entitled to any of the relief prayed by him. For above reasons, I record my finding in Point No. 1 in Negative.

13. In the result, award is passed as under:—

(1) Termination of service of workman is not illegal, he is not entitled for regularization.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 740.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार असिस्टेंट जनरल मैनेजर, बी॰एस॰एन॰एल॰ एंड अदर्स, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 33/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40011/08/2006-आई आर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 740.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 33/2006) of the Cent. Govt. Indus. Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Assistant General Manager & Others, BSNL, Lucknow and their workman, which was received by the Central Government on 03/02/2014.

[No. L-40011/08/2006-IR(DU)]

P.K VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT :** DR. MANJU NIGAM, Presiding Officer

**I.D. No. 33/2006**

Ref. No. L-40011/8/2006-IR(DU) dated 15.11.2006

**BETWEEN :**

The Org. Secretary
Bhartiya Mazdoor Sangh,
06, Naveen Market, Kaiser Bagh, Lucknow
(Espousing cause of Shri Shailendra Singh)

AND

1. The Asstt. General Manager (Admn.)
   BSNL,
   O/o Principal General Manager,
   Telecom Distt. Gandhi Bhawan, Lucknow
2. The Sub-Divisional Engineer Phones (Ext.)
   Central BSNL, Kaiser Bagh, Lucknow

**AWARD**

1. By Order No. L-40011/8/2006-IR (DU) dated 15.11.2006 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Org. Secretary, Bhartiya Mazdoor Sangh, 06, Naveen Market, Kaiser Bagh, Lucknow and the Asstt. General Manager (Admn.), BSNL, O/o

Principal General Manager, Telecom Distt., Gandhi Bhawan, Lucknow & the Sub-Divisional Engineer Phones (Ext.), Central, BSNL, Kaiser Bagh, Lucknow for adjudication.

2. The reference under adjudication is:

> "Whether the Demand of the Bhartiya Mazdoor Sangh for seeking temporary status in services, for Shri Shailendra Singh, from the management of BSNL, Lucknow, is legal and justified? If yes, to what relief the workman is entitled to and from which date?"

3. The case of the workman's union, in brief, is that the workman, Shailendra Singh had been engaged w.e.f. 01.07.2000 by the opposite party for cleaning work at Charbagh Telephone Exchange, Lucknow and he put his attendance on the Attendance Register and was made payment on the ACG-17 voucher at the end of every month. It is submitted by the workman's union that the workman worked for more than 1500 days since his engagement and also 240 days in each year and when he requested for his regularization then the management instead of regularizing his services terminated him; whereas on the contrary the management has regularized the services of other junior workman. Accordingly, the workman's union has prayed that the workman be granted temporary status from July, 2003 and be given seniority upon the other junior workmen.

4. The management has denied the claim of the workman's union by filling its written statement; wherein it has submitted that the engagement of the workman was purely on daily wage basis and was never engagd on permanent basis. It has further submitted that the workman never completed 240 days of regular and continous service in any financial year; therefore, the workman was neither given temporary status nor was considered for regularization. The management has also submitted that the workman was engaged on daily wage basis as and when required, therefore, there was no termination or retrenchment of his services by the BSNL. Accordingly, the management has prayed that the claim of the workman's union be rejected without any relief to the workman concerned.

5. The workman's union has neither filed any rejoinder nor has entered into the witness box to corroborate its pleading in the statement of claim or to prove the photocoy of the documents field by it through oral evidence.

6. From the perusal of the file it is evident that the workman's union was first afforded the opportunity to lead its evidence on 10.12.2007; but it failed to avail the same. Since then the case is lingering on pretext or other; but the parties did not adduce any evidence. Likewise the parties did not forward any argument in support of their respective stand, therefore, the case was reserved for award, keeping in view long pendency of the case since year 2006 and reluctance of the parties to contest their case.

7. I have scanned the entire material available on the file.

8. It is the case of the workman's union that the workman had not been given temporary status in spite of completion of more than 1500 days of continues service; but the management has denied this fact. Hence, in view of the denial of the management, it was incumbent upon the workman's union to lead evidence to corroborate its averment; but the workman's union utterly failed to do so, as it did not adduce any evidence in support of its pleadings.

9. It is settled position of law that a party challenging the legality of an action, the burden lies upon it to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the action of the management in not granting the temporary status to the workman after completion of three years' continuous services. This claim has been denied by the management; therefore, it was for the workman's union to lead evidence to show that the alleged injustice was done to the workman, by the management of the BSNL; but the workman's union failed to prove the same as it has not turned up to corroborate the allegations by proper evidence.

10. In 2008(118) FLR 1164M/s. Uptron Powertronics Employees'Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti Vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC) V.K. Raj Industries Vs. Labour Court and others, 1984 (49) FLR 38 Airtech Private Limited v. State. of U.P. and others and 1996 (74) FLR 2004 (Alld.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court:

> "That in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

11. In the present case the workman's union has not turned to substantiate his case by way of filing any evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman had not been granted temporary status, in contravention to the rules; but the workman's union failed to forward any evidence in support of its claim, as it did not turn up for filing its evidence before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of BSNL was illegal and unjustifed.

12. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, Shailendra Singh is not entitled to any of the relief(s) claimed.

13. Award as above.

Lucknow,
19th August, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 741.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 8/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं॰ एल॰-22012/36/2010-आई आर (सी एम-II)]
बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 10th February, 2014

**S.O. 741.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Balaram OCP of MCP, Hingula Area of MCL, and their workman, received by the Central Government on 10/02/2014.

[No. L-22012/36/2010-IR(CM-II)]

B.M. PATNAIK, Desk Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BHUBANESWAR**

**PRESENT:** Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE No. 8/2011**

**Date of Passing Award-3rd day of April, 2013**

**BETWEEN:**

1. The Management of the Project Officer, Balaram OCP of MCL At/PO-Danra, Distt-Angul, Odisha
2. The Chief General Manager, Hingula Area of MCL, At-Mahendrapur, PO-Badajorada, Distt-Angul-Odisha

...1st Party-Management.

**And**

Their Workman represented through
The General Secretary,
Talcher Coal Mines Employees Union,
At-Qr. No. A/121, PO-N.S. Nagar,
Distt-Angul, Odisha

...2nd Party-Workman.

**APPEARANCES:**

| | | |
|---|---|---|
| Shri Sitaram Das Dy. Manager (Pers). | ... | For the 1st Party-Management. |
| None | ... | For the 2nd Party-Workman. |

**AWARD**

1. An Industrial dispute existing between the employers in relation to the Management of Balaram OCP of Mahanadi Coalfields Limited and their workman has been referred to this Tribunal-cum-Labour Court for adjudication by the Government of India in the Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 *vide* their letter No. L-22012/36/2010-IR (CM-II), dated 31.1.2011.

2. The dispute as referred to has been mentioned in the schedule of the letter of reference which is reproduced below:—

> "Whether the action of the Management of Balaram OCP of M/s. Mahanadi Coalfields Limited in removing Shri Bibhisan Nahak, Ex-General Mazdoor, Cat. II from services *w.e.f.* 20.10.2006 on the ground of unauthorised absence from 12.02.2005 to 06.06.2005 and previous habitual absenteeism, is legal and justified? To what relief the workman is entitled to?"

3. The 2nd Party union espousing the cause of the disputant workman has filed it's statement of claim stating that the disputant workman was a general mazdoor, cat. II in Balaram OCP under the Hingula Area of MCL, Talcher. He fell ill from 12.2.2005 to 6.6.2005 and was hospitalised at the Subdivisional Hospital, Talcher and made fit for duty *w.e.f.* 7.6.2005. Thereafter he reported for duty on 7.6.2005. But, he was not allowed to resume duty and was chargesheeted by the management of Balaram OCP of MCL on 8.6.2005. An enquiry was instituted against the disputant workman. The disputant workman also participated in the said enquiry. After completion of enquiry a report was submitted by the enquiry officer on which the disputant workman was removed from service. He appealed against the order of punishment. But, his appeal was rejected. Thereupon he went for conciliation to the labour authority and on failure of the conciliation proceeding the dispute was referred to this Tribunal by the appropriate Government.

4. The 2nd party union has submitted that the disputant workman during his illness could not inform the management. On getting fitness certificate, he reported for duty as per rule and certified standing orders. But, instead of permitting him to join the duties, the management has removed him from service. The punishment is too harsh, unfair and unjustified. Before imposing punishment of

removal from service, the disputant workman was not given any opportunity to show-cause on the report of the enquiry officer. His appeal was also dismissed without giving any specific ground. The findings of the enquiry officer are wrong and biased. Hence, order of removal from service be set aside and the disputant workman be reinstated in service *w.e.f.* 7.6.2005.

5. The 1st party management in its written statement has stated that the disputant workman had been prone to long unauthorised absence from duty in the years 2000 to 2004 also. He remained unauthorisedly absent for 270 days, 218 days, 230 days and 188 days respectively during those years. Further, he remained unauthorisedly absent from duty *w.e.f.* 12.2.2005 to 6.6.2005. Letter dated 8/12.4.2005 and 6.5.2005 were issued to the disputant workman by the Manager of Kalinga OCP now renamed as Balaram OCP of MCL directing him to report for duty within 3 days of the receipt of the letters above failing which he would be liable for disciplinary action. Failing to resume duty he was chargesheeted for misconduct on 8.6.2005 under the relevant provisions of the certified standing orders and called for to submit his explanation. But, he has not submitted any explanation. Thereafter the domestic enquiry committee was formed which conducted detailed enquiry. The disputant workman was given full opportunity to defend himself. The enquiry officer found him guilty of the charges. Copies of enquiry proceedings and report of the enquiry officer were sent to the disputant workman on 24.12.2005 for submission of representation if any. The disputant workman submitted his representation *vide* letter dated 24.12.2005. The disciplinary authority considered his representation before deciding for penalty and thereafter imposed the penalty of removal from service *vide* office order No. 1303 dated 1.3.2006.

6. It is to be mentioned here that after filing of the statement of claim by the authorized representative of the 2nd party union, no one appeared on its behalf, so also on the later stage of the proceedings of the case. On the date of settlement of issues, since the 2nd party union was absent he was set exparte. Later on, rejoinder to the written statement of the 1st party management was received through post on 12.3.2012, but non appeared on behalf of the union to get the exparte order set aside which still stands as it is.

7. On behalf of the 1st party management, one Shri Radha Mohan Panda, Sr. Manager (Personnel), Hingula Area of MCL filed his sworn affidavit in exparte evidence in which he proved the case of the management as stated in the written statement.

8. The 2nd party union has failed to appear in the case and lead any evidence in support of its case. It is a proved fact that the disputant workman has unauthorisedly remained absent from duty *w.e.f* 12.2.2005 to 6.6.2005 without any information to the management and did not respond to the letter sent by the management directing the disputant workman to report for duty. During the year 2000 to 2004 he also remained on unauthorized leave and for that he was punished for five times. Thus, he had been a habitual absentee. He was duly chargesheeted and after proper enquiry in which he participated and got sufficient opportunity to defend himself, he was found guilty of charges and by way of punishment removed from service. The 2nd party union or the disputant workman has grossly failed to show that he was heavily punished and the departmental enquiry against him was not conducted fairly and in proper manner and he was not accorded sufficient opportunity to defend himself. Hence the claims made in the statement of claim prove to be void and the disputant workman is not entitled to any relief.

9. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 742.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 52/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं॰ एल-22012/230/2004-आईआर (सीएम-II)]
बी॰एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 10th February, 2014

**S.O. 742.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Ballarpur Area of M/s. Western Coalfields Limited, and their workman, received by the Central Government on 10/02/2014.

[No. L-22012/230/2004-IR(CM-II)]
B. M. PATNAIK, Desk Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR**

**Case No. CGIT/NGP/52/2005** Date: 23.01.2014

**Party No. 1:** The Chief General Manager, Ballarpur Area of M/s. Western Coalfields Limited, Post & Tah. Ballarpur, Chandrapur (MS)

*Versus*

**Party No. 2:** Shri Lomesh Kharatad,
General Secretary,
Rashtriya Colliery Workers Congress,
Dr Ambedkar Nagar, Ballarpur,
P.O. & Tah. Ballarpur, Chandrapur (MS).

**AWARD**

(Dated: 23 January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act"in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Rajesh Narayan, for adjudication, as per letter No. L-22012/230/2004-IR (CM-II) dated 29.06.2005, with the following schedule:—

> "Where the action of the management in relation to Ballarpur Area of Western Coalfields Limited in terminating the services of Shri Rajesh Narayan, Sweeping Mazdoor Cat. I vide office order No. Vekoli/Bakshe/Mumpara/Kavi/270 dated 18/26.05.2003 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Rajesh Narayan, ("the workman"in short) through his union, "Rashtriya Colliery Workers Congress", ("the Union" in short) filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered union under the Trade Unions Act, 1926 and the Party No. 1 is a Government Company and is a "State" within Article-12 of the Constitution of India and the terms and conditions of servcie of the workman are governed by the certified standing order of Party No. 1 and the workman was working as a Sweeping Mazdoor at Ballarpur Area office and he had an unblemished service record and charge sheet dated 17/19.11.2001 (wrongly mentioned a 17/19.11.2009 in the statement of claim) was served on him by the Dy. General Manager, Ballapur Area, for remaining absent from duty from 11.10.2001 and the workman submitted his reply to the charge sheet on 26.11.2001, stating that he was ill and that he was not allowed to resume duty from 26.11.2001 to 22.01.2002, though he approached the authority time and again and he was kept under forced idleness, on the ground of initiation of disciplinary proceedings and the same amounted to suspension and he is entitled for full wages or subsistence allowance and as the same was not paid to him, the departmental enquiry was vitiated and the charge sheet was signed by the Dy. General Manager, who is not competent to do so, as per the provisions of the standing order and the charge sheet was not maintainable and the entire action based on such charge sheet was illegal and the charge sheet was also vague and suffered from serious infirmities and a false, fabricated and manipulated enquiry was conducted against the workman, where the principles of natural justice were grossly violated and though the workman was reporting for enquiry, but most of the time, either the enquiry officer or the management representative was not available and his presence was not being marked in the proceedings and on 01.02.2003, he submitted an application to the Personnel Manager, Ballarpur in that regard and he was not being marked as present in the enquiry and the enquiry officer was biased and tried to blackmail the workman and the same was brought to the notice of the Manager and the enquiry officer acted only as a recorder and the evidence was not evaluated properly and the enquiry officer travelled beyond his jusrisdiction and he did not explain the procedure of enquiry to the workman and documents were suppressed and the reply of the workman dated 26.11.2001 to the charge sheet was never examined and the appointment of the enquiry officer by the Personnel Officer (Administration) Ballarpur was illegal, as the said officer was not the charge sheeting officer and the workman was dismissed from services *vide* order dated 18/26.05.2003, issued by the staff officer (Mining) Ballapur Area, who was not the competent authority in accordance with the provisions of the certified standing order and the appeal preferred by the workman against the order of punishment vide letter dated 31.12.2003 to the General Manager, Ballarpur Area and the union's letter dated 10.10.2003 remained unattended and was not disposed of and the appeal of the workman to the Chairman-cum-Managing Director *vide* his application dated 01.08.2005 against his dismissal was also not replied and the punishment is too harsh and disproportionate.

Prayer has been made by the union for the reinstatement of the workman in service with continuity, full back wages and consequential benefits.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that the alleged industrial dispute has been raised by Shri Lomesh Maroti Khartad as the General Secretary of the union and at the conciliation stage itself, it had challenged the *locus standi* of the union to riase the dispute and to its knowledge, the union is registered at Dhanbad, in the state of Jharkhand and the union has no registered status at Ballarpur, within the meaning of the Act and the union is not the union of the workers of Ballarpur Colliery and as such, the union cannot raise the dispute validly.

It is further pleaded by Party No. 1 that the workman was employed as a sweeping mazdoor cat.I, at the office of the Chief General Manager, Ballarpur Area on and from 01.04.2000 and right from the beginning of his carrier, he developed the habit of remaining unauthorized absent, so

much so that, from May 2000 to December, 2000, he had put in only 80 days attendance and for such unauthorized absence, he had been charge sheeted and warned several times, but there was no improvement in his conduct and the workman again absented himself from duty without any sanctioned leave and without any intimation to the management, *w.e.f.* 11.10.2001 and therefore, a charge sheet dated 17/19.11.2001 was issued to him and the workman submitted his reply to the charge sheet, *vide* his letter dated 26.11.2001, in which, it was mentioned by him that his relatives and mother were sick and he was busy in attending them, hence, he counot not able to inform the management and the workman admitted that he was at fault and tendered apology and begged to be excused, with the assurance that he would not commit any such mistake in future and since, his explanation was found not to be satisfactory, a departmental enquiry was constituted *vide* order dated 18.03.2002, appointing Shri R.K. Randhale as the enquiry officer and the workman on his request was allowed on duty pending enquiry, *vide* letter 20/22.04.2002, but did not report for duty, even though, he received the letter dated 20/22.04.2002 and the workman attended the enquiry in the 2nd sitting held on 22.04.2002 and prayer for time to engage co-worker, which was allowed by the enquiry officer, but thereafter, he did attend the enquiry on several dates, but he attended the enquiry in the 13th sitting on 15.02.2003 alongwith his coworker, Shri Shankar Das and when the enquiry officer read over and explained the charges, the workman admitted the charges and stated further that due to falling sick frequently, he was not able to perform his duty properly an that his hand was burnt and he begged excuse, but the workman did not file any document in support of his claim and even though, the enquiry was adjourned twice thereafter, the workman did not attend the enquiry and on the last date of enquiry, the management representative filed and the relevant documents and records in support of the charges, which were taken on record and the enquiry came to be closed and the enquiry officer submitted his report, which was based on the record and documents of the enquiry, to Dy. General Manager, Ballarpur Area on 05.05.2003 and a copy of the enquiry report was served on the workman *vide* letter dated 08/11.05.2003 and the workman did not file any representation and he was dismissed from services *vide* office order dated 18/20.05.2003, with the approval of the competent authority and the workman was served with the order of dismissal on 21.05.2003 and he did not file any appeal against the same and the enquiry was fair and proper and considering his consistent bad record of habitual absenteeism, his misconduct was considered serious enough to dismiss him from services and the punishment was proportionate to the charges and the workman is not entitled to any relief.

4. In the rejoinder, it is pleaded by the union that it is competent to raise the dispute.

5. As this is a case of dismissal of the workman, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken for consideration as a preliminary issue as per order dated 22.11.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. It is to be mentioned here that evan though several opportunities were given to the union to adduce evidence, no evidence was adduced either by the union or the workman. The union and so also the workman did not appear to contest the case. So, on 21.08.2013, order was passed to proceed *exparte* against the workman.

7. So far the question of perversity of the findings of the enquiry officer and proportionality of the punishment are concerned, on persusal of the record and taking into consideration the submissions made by the Learned advocate for the Party No. 1, it is found that this is not a case of no evidence or that the findings of the enquiry office are totally against the evidence on record. It is also found that the enquiry officer after assessing the evidence on the record of the enquiry in a precise manner has arrived at the findings. The findings of the enquiry officer are not as such, which cannot be arrived at by any prudent man on the evidence on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

Grave misconduct of remaining unauthorized absence has been proved against the workman in a properly conducted departmental enquiry. It appears from the record that the Party No. 1 has lost confidence on the workman. So, the punishment of termination of the services of the workman from services imposed against the workman cannot be said to be shockingly disproportionate to the grave misconduct proved against him. Hence, there is no scope to interfere with the order of punishment. Hence, it is ordered:—

**ORDER**

The action of the management in relation to Ballarpur Area of Western Coalfields Limited in terminating the services of Shri Rajesh Narayan, Sweeping Mazdoor Cat. I vide office order no. Vekoli/Bakshe/Mumpara/Kavi/270 dated 18/26.05.2003 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 743.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 260/2003)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2004 को प्राप्त हुआ था।

[सं॰ एल-22012/162/2003-आईआर (सी एम-II)]

बी॰ एम॰ पटनायक, डेस्क अधिकारी

New Delhi, the 10th February, 2014

**S.O. 743.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 260/2003) of the Cent. Govt. Indus, Tribunal-cum-Labour Court, Nagpur, as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 10/02/2014.

[No. L-22012/162/2003-IR(CM-II)]
B. M. PATNAIK, Desk Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/260/2003** Date: 29.11.2013.

**Party No. 1(a):** The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015.

**Party No. 1(b):** The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgatye,
Mumbai-400020.

***Versus***

**Party No. 2:** The Secretary,
Rashtriya Mazdoor Sena, Hind Nagar
Ward No. 2, Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

**AWARD**

(Dated: 29th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Gajanan Daduji Chahande for adjudication, as per letter No.L-22012/162/2003-IR (CM-II) dated 08.12.2003, with the following scheduled:—

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Gajanan Daduji Chahande, Security Guard *w.e.f.* 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Gajanan Daduji Chahande, ("the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 15.07.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract

labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded *inter alia* that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 15.07.1993 to 14.03.1999, without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed in this reference, the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the reliefs prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit,

the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that the Contractor approached them saying that there was vacancy in FCI and accordingly the contractor engaged them in F.C.I. and the contractor was Singh Security. The workman in his cross-examination has further admitted that no appointment order was issued either by the F.C.I. or Singh Security to him.

5. Shri Suresh N. Bokade, the witness examined on behalf of the Party No. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness for the Party No. 1 has admitted the suggestions given on behalf the workman that the workman other security guards were deployed tom work in F.C.I. through the contractor, Singh Security Services and Singh Security Services was given the contract to supply security guards for two years and after the expiry of contract of Singh Security Services in 1995, contract for supply of security guards was given to Industrial Security and Fire Services for two years and the workman and other security guards were engaged in F.C.I. through the contractors till December, 1998 and after the notification made by the Government imposing ban for engagement of contract labourers in 1998, F.C.I. discontinued the engagement of contract labourers and security guards were being deployed for watch and ward duty of F.C.I. depots and the workman other security guards worked continously from the date of their respective engagement till December, 1998 in F.C.I. through different contractors and F.C.I. had the control regarding the duties to be performed by the security guards.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman from 15.07.1993 was in the service of the Party No. 1 till 14.03.1999, when all of a sudden, his services were terminated orally by the Party No. 1 without compliance of the mandatory provisions of Law, particularly the provisions of sections 25 F and 25 H of the Act and Party No. 1 also did not comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 ("Act, 1970" in short) and as such, the termination of the workman is illegal and null and void. It is further submitted by the learned advocate for the workman that the appointment of the workman to work in the establishment of the Party No. 1 was admittedly through contractor appointed by Party No. 1 and it is an admitted position that the tenture of the contract was for two years and though there was change of contractor in every two years, the wrokman and other security guards remained the same and there was a specific condition in the contract between the management and the contractor that the set of workers will be continued by the incoming contractor and in such fashion, the workman and other security guards continued to work in the establishment of Party No. 1 right from the date of their respective date of appointments till March, 1999 there was no bread in their service and each of them completed 240 days of service in each calendar year and the same shows that the work was all time available in the establishment of Party No. 1 and is of perennial nature and ever through the workman and other security guards were employed by the contractor, fact remains and is also admitted by the witness for the Party No. I that Party No. 1 had control over the working of the workman.

The learned advocate for the workman further submitted that through Party No. 1 in the written statement had in the written statement has contended that it was exempted from the provisions of the Act, 1970, it has failed to produce any document in corroboration of such contention and as mere statement of Party No. 1 is no sufficient, the fact remains that Party No. 1 was never exempted from the provisions of the Act, 1970 and the Central Government by notification dated 01.01.1990 issued U/s 10 of the Act, 1970 abolished contract labour system in the establishment of Party No.1 and after issuance of the said notification, Party No. 1 was prohibited from engaging any contract labour and as the workman and other security guards were engaged by Party No. 1 inspite of notification prohibiting contract labour system, the workman became the direct employee of the Party No. 1 and he has attained the status of regular employee of Party No. 1.

It was also argued by the learned advocate for the workman that Party No. 1 has not filed on record and document showing that it was registered as principal employer or the contractors were registered under section 7 and Section 12 respectively of the Act, 1970 and in absence of the said documents, it cannot be assumed that the contract between the contractor and management was genuine and it is clear that the contracts between the Party No. 1 and the contractors were sham and bogus and such contract was entered into only with *malafide* intention to deny regular employment to the workman and after termination of the services of the workman, Party No. 1 appointed police and home guard personnel as security guards and this proves that the work is available even today and after the notification dated 01.11.1990, Party No. 1 regularized the contract labourers were engaged at Nagpur and Manmad, but same was not the case at Akola, Amravati, Wardha and Gondia and this shows that Party No. 1 indulged into invidious discrimination amongst equal, which is contrary to provisions of Articles 14 & 16 of the constitution and the Writ Petition filed by the workman and others as disposed of by the Hon'ble High Court with a direction to the petitioners to approach the appropriate authority and as such, the judgment in Writ Petition 1389/99, cannot operate as res-judicata.

In support of the contentions, the learned advocate for the workman placed reliance on the decision reported in 2006(2) Bom.CR-167 (Food Corporation of India *Vs.* Prashant Pandurang Ramteke & others).

The learned advocate for the workman also submitted that as the termination of the workman from service is illegal, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workman was never appointed by the Party No. 1 and he was engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a part and for that the reference is not maintainable. It was further submitted by the learned advocate for the the Party No. 1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No. 1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No. 1 and the workman and the Party No. 1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No. 1 that the workman and some others has approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said wirt petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgement that the Hon'ble High Court did not consider the main relief and passed the following order:

> "In view of the judgement of the Constitution Bench in Steel Authority of India Ltd. and others *Vs.* National Union water front workers and others [reported in 2001(7) SCC1], and relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
>
> * * * *
>
> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redress of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them to liberty to approach the appropriate authority for redress. The Hon'ble High Court in the decision reported in 2006(2) Bom. CR—167 (Supra) have held that, "Because Division Bench had not gone into merits of the case the decision cannot operate as res-judicata". Applying the principles settled by the Hon'ble High Court, as mentioned above to the case in hand, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the Party No. 1 of papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service.

The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Law.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a Security Guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India *Vs.* M/s. Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others *Vs.* National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others *Vs.* Steel Authority of India and Others.

In the decision reported in 1985-II LLOJ-4 (supra.) the Hon'ble Apex Court have held that:—

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. in such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. *Vs*. State of Saurashtra (1957-I-W-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC—3656 (supra) the Hon'ble Apex Court have held that:—

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute

brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract if found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW 430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Call): C.O. No. 6545(W) if 1996, D/-9-5-1997(Call): W.A. Nos. 345-354 of 1997m D/-17-4-1998 (Kant): W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom), 1998 Lab IC 2571 (Call), Reversed.

In cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

12. In the decision reported in 1994 II CLR 402 (Supra.), the Hon'ble Apex Court have held that:—

> With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a workers, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.
>
> The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1)(c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant labour factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract

labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principle employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsiblities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India Limited *Vs*. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:—

> "The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association *Vs.* Union of India, 1985 I CLR SC 165= (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura, Refinery Mazdoor Sangh *Vs*. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath *Vs.* National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition

of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labaourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

13. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid wages as their employee. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

14. It is own case of the workman that he was engaged by the contractor. So, the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on records and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

**ORDER**

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 744.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार मेनेजर (ह्यूमन रिसोर्स डी॰), हिंदुस्तान केबल्स लिमिटेड एंड अदर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 51/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[एल-42012/42/2009-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February 2014

**S.O. 744.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 512009) of the Cent. Govt. Indus. Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of the Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workmen, which was received by the Central Govenrment on 03/02/2014.

[No. L-42012/42/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. Manju Nigam, Presiding Officer
**I.D. No. 51/2009**
Ref. No. L-42012/42/2009-IR(DU)
dated: 26.10.2009

**BETWEEN**

Shri Chander Narain Singh S/o Shri Daljeet Singh
24/47/25/E, Kidwai Nagar, Allahapur, Allahabad.

**AND**

1. The Manager HRD, Hindustan Cables Limited, Naini, Allahabad.
2. The Manager
M/s Industrial Security Services
4, Stratchy Road,
Allahabad.

**AWARD**

1. By Order No. L-42012/42/2009-IR(DU) dated 26.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Chander Narain Singh, S/o Shri Daljeet Singh, 24/47/25/E, Kidwai Nagar, Allahapur, Allahabad and the Manager, HRD, Hindustan Cables Limited, Naini, Allahabad and the Manager, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

" Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Chander Narain Singh is Sham and Bogus? If yes, whether the action of the management in Terminating his services w.e.f.26/10/1999 is legal and justified? If not, what relief the workman is entitled to?"

3. The case of the workman, Chander Narain Singh, in brief, is that the was appointed as a driver with the opposite Party No. 1 on 31.10.1998 and worked continuously, with some artificial break, till 23.08.1999; and he was restrained from working by the Security Officer of the management w.e.f. 26.10.1999. The workman has submitted that he was working with the opposite party as Driver which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite Party No. 1 viz., M/s. Hindustan Cables Ltd.; and accordingly, there was relationship of employee and employer between him and the opposite party No. 1. It is further been submitted by the workman that he was paid through its illegal agent *i.e.* opposite Party No. 02 *viz.,* M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 1 terminated his services without following the provisions of Section 25 F of the I.D. Act, 1947, and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 1 has disputed the claim of the workman by filling its written statement; whereas the opposite Party No. 2 viz., M/s. Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and Abolition) Act, 1970; and the opposite Party No. 2 is its contractor under the contract Labour (Regulation and Abolition) Act, 1970 having license under the Act. The opposite Party No. 1 has specifically submitted that it has neither engaged he workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I.D. Act. It is submitted by the opposite Party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite Party No. 02 *viz.* M/s. Industrial Security Services was assigned job contract dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite Party No. 1 that it had never paid any wages to the workman; rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite Party No. 1 used to make payment to the opposite Party No. 2 and thereafter, the workman was being paid by the opposite Party No. 2; likewise, the opposite Party No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite Party No. 1 and the workman. It has also been submitted by the opposite Party No. 1 that the contract between opposite Party No. 1 and opposite Party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.6.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite Party No. 1 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S.N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to corss-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 01 on 31.10.1988 as Driver and worked as such till 24.08.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25F of the I.D. Act, 1947.

10. In rebuttal, the opposite Party No. 01's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contract/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 1 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s. Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 31.10.1988 as Driver after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In Cross-examination he has stated that he used to drive HCL's vehicle No. UA 3440 and he did not receive any appointment letter from HCL. He has stated that paper No. 10/92 to 10/101 is salary slip which bears office's name as Industrial Security Services; but he received salary from HCL amount to Rs. 2500/- per month. He also stated that paper No. 16/43 is issued by Industrial Security Services. He admitted that he was not given permanent Identity Card because he was engaged on daily wages. He admitted his signatures on the paper No. 16/69.

13. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL. It was further stated that the Industrial Security Service used to arrange duty of their workmen/employees, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards etc. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor; moreover, he also stated that the workman was not a Driver. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was employee of M/s. Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. It is stated by management witness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Driver and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of following documents:—

(i) Log book of HCL from 31.10.1998 to 23.08.1999.

(ii) Maintenance voucher of vehicle of HCL.

(iii) Petrol voucher.

(iv) Payment slips from November, 1998 to 23.08.1999.

(v) Experience Certificate.

(vi) Award of Industrial Tribunal dated 25.01.2003.

(vii) Judgment Hon'ble High Court, Allahabad.

(viii) Letter of HCL for requirement of Security Guards.

15. Per contra, the opposite party No. 02 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite party No. 01 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite party No. 2 *i.e. M/s*. Industrial Security Services whose services as temporary Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. It is also the case of management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite party No. 01 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e*. M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:—

(i) Copy of Job Contract/Agreement dated 30.03.1999, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract w.e.f. 30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy of bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 9/2002 between M/s Hindustan Cables Ltd. & M/s. Industrial Security Services Vs. Chander Narain Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regrad there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post of Security Guard in their establishment and the Security work is carried out by some agency on contract. It is also pleaded that the services of the workman were availed as temporary Guard through one contractor *viz.* Industrial Security Services. In support of its contention, the management of M/s. HCL has filled photocopies of registration certificate under Contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/ agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing 'security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/ contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990 to 30.06.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 1 and opposite Party No. 2; rather he has pleaded that he was appointed by the opposite party No. 01 as Driver and was an employee of the opposite Party No. 1. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them and he worked with HCL as temporary Guard. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

17. In view of the discussions made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman *w.e.f.* 23.08 .1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai*

Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25-F of the Act, it is necessary for the claimant to lead evidence to the effect that he was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The workman has filed photocopy of Vehicle Log Book of Hindustan Cables Ltd. regarding details of vehicles for the period November, 1998 to 23.08.1999 which bears signature of mostly workman, Chandra Narayan in the column "Signature of USER with Designation there is no mention of the designation of the signatories of the Log Book; also no stamp is there to ascertain the fact as to who used the said vehicle and in which capacity he used the said Vehicle. The workman also did not produce any of person who signed the said Log Book to corroborate his pleading that the actually worked as 'Driver' with the HCL Hence, in the absence of any supportive evidence the photo copy of the Log Book filed by the workman is not reliable to be considered. However, the vouchers of M/s. Jamuna Par Automobile, Allahabad bears stamp and signatures of Security Officer of HCL; but they pertain to intermitted dates and even if they are admitted as secondary evidence even then they do not suffice the need to prove the factum that the workman worked as Diver with opposite party No. 1 for the alleged period. The photocopy of other documents filed by the workman do not support the statement of the workman; rather they go contrary to his pleadings that he was employee of the HCL, as the photocopy of wage slips contain ISS (M/s. Industrial Security Service) as name of establishment, however the place is mentioned as HCL, Naini, Allahabad. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as temporary security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/ transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 09/2002 between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services *Vs*. Chander Narian Singh goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed as security guard-cum-driver in HCL, Allahabad on 30.10.1998 through contractor Industrial Security Services. The management has also been able to prove that deduction towards EPF and ESI was being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set-out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC Range Forest Officer *vs*. S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti and Asstt. Executive Engineer as follow:

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the Log Book and certain vehicle servicing receipts, which do not suffice the matter. Moreover, the photocopy of documents *i.e.* wage slip, EPF pass book and his pleadings before Industrial Tribunal, Uttar Pradesh goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01.

21. On the other hand the management has well proved its case by filling copy of the contract with the M/s. Industrial Security Services that the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that that the workman was an employee of the opposite party No. 02 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year form the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Chander Narain Singh was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 1 *viz.* M/s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor *viz.* M/s. Industrial Security Service, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd.. The reference under adjudication is answered accordingly.

23. Award as above.

LUCKNOW.

26th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 745.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर (ह र), स्कूटर्स इंडिया लिमिटेड, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 28/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.02.2014 को प्राप्त हुआ था।

[सं॰ एल-42011/38/2009-आईआर(डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 745.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 28/2009)

of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager (HR), Scooters India Limited, Lucknow and their workman, which was received by the Central Government on 03.02.2014.

[No. L-42011/38/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. Manju Nigam, Presiding Officer
**I.D. No. 28/2009**
Ref. No. L-42011/38/2009-IR(DU)
dated 03.08.2009

**Between :**

The General Secretary
S.I.L. Employs Union
101-Chander Shekhar Azad Nagar Housing Society
Daroga Khera, Post-Auravan
Lucknow
(Espousing cause of Shri Krishna Kumar Pandey)

**AND**

The Manager (HR)
Scooters India Limited
Sarojini Nagar
Lucknow-226 008

**AWARD**

1. By order No. L-42011/38/2009-IR(DU) dated 03.08.2009 and its subsequent corrigendum dated 06.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, S.I.L. Employs Union, 101-Chander Shekhar Azad Nagar Housing Society, Daroga Khera, Post-Auravan, Lucknow and the Manager (HR), Scooters India Limited, Sarojini Nagar, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the action of the Management of Scooters India Ltd., Lucknow in denying Reimbursement/Medicines for treatment of Diabetes to their workman Shri Krishna Kumar Pandey is legal and justified? If not, what relief the workman concerned is entitled to?"

3. The case of the workman's union, in brief, is that the workman, Krishna Kumar Pandey, has been working as Artisan Grade 'C' since 1976. It is alleged that the workman is not being reimbursed the medical expenses pertaining to treatment of Diabetes in respect of him and his wife. It is submitted by the workman's union that the management in a tripartite discussion, before the Dy. Labour Commissioner, A.P. Sen Road, Lucknow, in the year 1992-93 admitted that Diabetes is a chronic disease even then the management is not making reimbursement to his medical expenses arbitrarily treating Diabetes a non-chronic disease. It is submitted by the union that the Diabetes is a chronic disease and it needs medical treatment life long, therefore, the action of the management in not making reimbursement towards expenses treatment of diabetes is illegal and unjustified and accordingly, has prayed that the management be directed to make reimbursement to the expenses born by him in his treatment of diabetes, treating it a chronic disease.

2. The management of the Scooter's India has denied the claim of the workman's union by submitting its written statement, wherein it has been submitted that the company has been providing every medical facility to the workman and due payments as per medical rules for the disease which requires prolonged treatment, including Diabetes, is being paid to the workman and he is not entitled for the relief as claimed by him in his statement of claim. Accordingly, the management has prayed that the claim of the workman's union be rejected being devoid of any merit.

3. The workman's union has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

4. The parties have filed photocopies of various documents in support of their respective claim. The workman's union has examined Shri Vadsudev Pandey, General Secretary, whereas the management has examined Shri Sujeet Kumar, Chief Manager (HR and Admin) in support of their stands. Parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

9. Heard authorized representatives of the parties and perused entire evidence on record.

10. The authorized representative of the workman has submitted that the management has been making reimbursement to the medical bills towards treatment of Diabetes, treating it chronic disease, but has discontinued the same and is making payment within the ceiling of one month's pay. He has further submitted that it is well known that the disease *viz.* Diabetes is chronic and its treatment is carried out round the year, during whole life of the person suffering from Diabetes, therefore, the move of the management in not making reimbursement to the entire sum incurred on treatment of diabetes is illegal.

11. Per contra, the authorized representation of the Scooter's India has submitted that the disease, Diabetes is included in the list of chronic disease, therefore, the workman is being reimbursement within the ceiling limit, prescribed by the Factory under Medical Rules.

12. The workman union's witness has stated that the management and the union arrived at a settlement on 01.07.1992; wherein it was agreed upon that chronic diseases should be kept outside the purview of the one month's ceiling. He further stated that the management before Dy. Labour Commissioner agreed that Diabetes is chronic disease but later refused the same and is not making payment to the workman. In cross-examination he stated that rules of one month's pay ceiling towards reimbursement was made effective from 1990-92. He also stated that the workman takes medicine from departmental dispensary; but he is denied the same when he cross the ceiling limit.

13. In rebuttal, the management witness stated that Diabetes does not find place in the list of chronic disease dated 27.04.96 and no amendment has been made in the said list till date. He further stated that the Health Scheme in the establishment is implemented on agreement between union and management and directions of the management. He also stated that as per his establishment's Rules, Diabetes is not a chronic disease.

14. The workman, union has come up with a case that the workman, K.K. Pandey and his wife is suffering from Diabetes which is a chronic disease, requiring prolong treatment and the management had been making payment to the expenses incurred on it, treating it chronic disease, without any ceiling; but all of sudden the management has stopped making reimbursement to the entire expenditure incurred on the treatment of Diabetes and has reduced the same to the ceiling limits of the one month's salary. In this regard the management has pleaded that the Diabetes is not a chronic disease as per list of chronic disease dated 27.04.96, therefore, the workman is entitled for reimbursement within the ceiling limit of one month's salary only. The case of management heavily rests on the list of disease dated 27.04.1996, which reproduced hereunder:

"SCOOTERS INDIA LIMITED, LUCKNOW

27.04.1996

It is proposed that in case of the diseases requiring prolong treatment medicines may be kept in the stock of SIL dispensary and may be issued to the patient based on physical examination by the company's CMO. The medicines will be issued to the patient for a week only at a time, after which the patient will have to appear before the CMO once in a fortnight for a check up.

In case the recommended medicines are not available in the dispensary, the patient will have to procure the same from market for at least 3 days consumption on reimbursable basis after which the dispensary will provide the same for further treatment.

In the first instance, essential/equivalent medicines for the following disease shall be retained in dispensary, procurement of which may please be approved in principle.

Cancer
Poliomylitis
Tuberculosis
Leprosy
Cardiac diseases
Hypertension
Renal failures
Mental diseases
Wilsons disease
Trigeminal Nuralgia
Epilepsy
Irritable Bowel Syndrome—Crohn's disease
Obstructive Pulmonary diseases
AIDS

Sd/-
(S.A.H. RIZVI)

SM(P&A)"

A bare perusal of the contents of the above document shows that the management of Scooter's India has devised a list certain diseases which require long treatment; but on going through the list of diseases mentioned therein it is apparent that all of them are not chronic disease and also in the document, there is no whisper of the fact that these diseases are chronic; rather 'the disease requiring prolong treatment' is used for them. Also, disease like Cancer and Tuberculosis cannot be said to be chronic because they may be cured through timely detection and taking full course of the medicines.

15. The workman has pleaded that the management has been making the reimbursement of the entire amount incurred on treatment of Diabetes, treating it a chronic disease, but has stopped this practice since 1992. In this regard the management witness has stated in his cross-examination that Factory Order, regarding management's decision on the issue whether Diabetes is chronic disease or not, has not been issued. This goes to show that the management has neither prepared any authentic list of disease in the chronic category, as it is evident from list dated 27.04.1996 and has been making reimbursements, beyond one month's ceiling, towards expenses incurred on the treatment of Diabetes; but has stopped the same and initiated making reimbursements within the ceiling limit in an arbitrary manner with issuing any order/circular/memorandum/notification. Also, as per general law an employer, particularly Central Government PSU, cannot

escape from its liability to provide medical facility to it employees within the parameters of schemes devised by the Central Government, provided it has been spared by the Central Government with special orders in this regard or it is running its own better scheme. It is noteworthy to mention that under the medical schemes run by the Central Government, Diabetes is taken as 'Chronic Disease' then the management of Scooter's India cannot delete Diabetes from the list of Chronic disease in its establishment and that too without approval of the Central Government or issuance of any Factory Order in this regard.

16. Thus, in view of the facts and circumstances of the case and the discussions made hereinabove, I am of the considered opinion that the action of the management of Scooters India Ltd., Lucknow in denying the reimbursement/medicine for treatment of diabetes to their workman is illegal and unjustified; and accordingly, the workman, Krishna Kumar Pandey is entitiled for reimbursement/medicine for treatment of diabetes, irrespective of ceiling limit.

17. Award as above.

LUCKNOW.
18th October, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 746.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर (ह॰र॰डी॰), कमांडेंट, देहरादून कैंट, देहरादून के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 18/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-14011/25/2001-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 746.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 18/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commandant, Dehradun Cantt, Dehradun and their workman, which was received by the Central Government on 03/02/2014.

[No. L-14011/25/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. Manju Nigam, Presiding Officer
I.D. No. 18/2009
Ref. No. L-14011/25/2001-IR(DU)
dated 01.07.2009

**BETWEEN:** Sh. Atar Singh and Others
Village—Gajiawala (Ghati Khola)
Post Ghanghora
Dehradun Cantt.
Dehradun.

**And**

1. The G.O.C.—in-Charge
Hq. Central Command, Post Dilkhsha
Lucknow.

2. The Commandant
447 Coy., ASC (Supply)
Type 'G' Dehradun Cantt.
Dehradun.

**AWARD**

1. By Order No. L-14011/25/2001-IR(DU) dated: 01.07.2009 the Central Government in the Ministry of Labour, New Delhi is exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Atar Singh and others, Village—Gajiawala (Ghati Khola) Post Ghanghora, Dehradun Cantt., Dehradun and the G.O.C. — in-Charge, Hq. Central Command, Post Dilkhsha, Lucknow & the Commandant, 447, Coy., ASC (Supply), Type 'G' Dehradun Cantt., Dehradun for adjudication.

2. The reference under adjudication is:

"Whether the demand of Shri Atar Singh & 20 others for regularization of their services from the dates mentioned against their names, as per Annexure, by the Management of Commandant, 447 Coy ASC (Sup.), Type 'G', Dehradun, is legal and justified? If yes, to what relief the workmen are entitled to?"

3. The order of reference was endorsed to the President, RMU, C/o Hemraj Sharma, H.No. 570/66, Gopalpuri, Alambagh, Lucknow with direction to the party raising the dispute to filed the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under Rule 10(B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 15.07.2009 and the parties appeared on notice. From perusal of file it is apparent that on 25.05.2010 both the parties were present and on the said date the workman moved an application, W-41 for furnishing the copy of reference order to facilitate them to file the statement of claim. On the next dated fixed *i.e*. 15.7.2010, the workman moved an application, W-46, enclosing copy of representation dated 14.7.2010, addressed to the Secretary, Ministry of Labour for amending the terms of reference. The workman in his application, W-46 has stated that it would not be possible for the workmen to file the statement of claim unless of terms of reference are modified because it will be prejudicial to the interests of the workmen; and accordingly, the workman prayed that the matter be kept in abeyance until the decision of the Central Government. Also, the office *vide* its letter dated 08.03.2011 required the ministry to dispose of the representation dated 14.07.2010 of the workmen regarding issuance of the corrigendum.

5. Since then the matter is pending for the want of corrigendum from the Appropriate Government and the workmen did not file any statement of claim. On 07.08.2012 the workman filed another application, D-77, stating therein that a writ petition regarding same matters in pending in the High Court, Delhi and next date in the said writ petition is fixed for 11.09.2013, hence requested that a date be fixed after 11.09.2013; accordingly, 24.10.2013 was fixed for further order with direction to the workman to file orders of the Hon'ble High Court.

6. On 24.10.2013 the parties were present; but the workman neither filed any order of the Hon'ble High Court where by a proceedings before this Tribunal have been stayed nor filed any statement of claim nor moved any application for adjournment seeking time to file the statement of claim nor any corrigendum has been received. Moreover, four year's time has passed and the workmen have failed to file their statement of claim. Hence, considering the reluctance of the workmen to file their claim statement, presuming that they are not interested in pursuing their case; and till date no direction from the Central Government in this regard or any stay of Hon'ble High Court has been received, the case was reserved for award.

7. In the above circumstances, the present reference order is decided as if there is no grievance left with the workmen. Resultantly no relief is required to be given to the workmen cocnerned. The reference under adjudication is answered accordingly.

8. Award as above.

Lucknow
13th November, 2013

DR. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 747.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल एंड हेड ऑफ़ ऑफिस, जियोलाजिकल सर्वे ऑफ़ इंडिया, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 86/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/66/2012-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 747.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 86/2012) of the Cent. Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of The Director General & Head of Office Geological Survey of India, Lucknow and their workmen, which was received by the Central Govenrment on 03/02/2014.

[No. L-42012/66/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. Manju Nigam, Presiding Officer
I.D. No. 86/2012
Ref. No. L-42012/66/2012-IR (DU)
dated: 06.12.2012

**BETWEEN:**

The General Secretary
Geological Survey of India Employed
Nav-Nhetana Association, 466/202-201
Primerose House Peer Bukhara, P.O. Chowk
Lucknow - 226 003
(Espousing cause of S.A.H. Rizvi)

**AND**

The Director General & Head of Office
Geological Survey of India
Northern Region, Sector -E
Aliganj Complex, Lucknow

**AWARD**

1. By Order No. L-42012/66/2012-IR (DU) dated: 06.12.2012 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by

clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, Geological Survey of India Employed, Nav-Nhetana Association, 466/202-201, Primerose House Peer Bukhara, P O Chowk, Lucknow and the Director General & Head of Office, Geological Survey of India, Northern Region, Sector-E, Aliganj Complex, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of opposite parties in not setting aside and quashing the order of transfer dated 09/11/2010 of workman Shri S A H Rizvi, Steno Gr. II, General Secretary to G.S.I. Employees, Nav-Chetna Association, Lucknow was legal and justified? If not, what relief the workman is entitled to?"

3. The order of reference was endorsed to the General Secretary, Geological Survey of India Employed, Nav-Nhetana Association, 466/202-201, Primerose House Peer Bukhara, PO Chowk, Lucknow with direction to the party raising the dispute to filed the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 21.12.2012 and the office was directed to issue registered notice to the workman' union for filing the statement of claim with list of reliance and list of witnesses on 11.10.2012. On the date fixed *i.e.* 11.10.2013 the workman was present in person; but did not file any statement of claim and prayed for another date for filing the statement of claim; accordingly, 18.03.2013 was fixed for filing the claim statement on behalf of the workman's union.

5. The workman's union remained absent on 18.03.2013 and on subsequent dates *i.e.* on 07.05.2013, 07.06.2013, 18.07.2013 and 06.09.2013. More than eight months' time has passed and the union has neither turned up nor moved any application seeking time for filing the statement of claim, on several dates, therefore, the case was reserved for award keeping in view the reluctance of the workman's union to contest their case.

6. In the above circumstances, it appears that the workman's union does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workmen's union. Resultantly no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

7. Award as above.

Lucknow.
09th September, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 748.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डीवीसोनाल मेनेजर, डिपार्टमेंट ऑफ़ टेलिकॉम, भोपाल के प्रबंधतंत्र संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/106/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 प्राप्त हुआ था।

[सं॰ एल-40012/53/2001-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th Fabruary, 2014

**S.O. 748.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/106/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Divisional Manager, Telecom, Bhopal and their workmen, which was received by the Central Government on 03/02/2014.

[No. L-40012/53/2001-IR(DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**No. CGIT/LC/R/106/2001**

PRESIDING OFFICER: Shri R.B. Patle

Shri Singhasan Ram,
S/o Shri Kishore Ram,
C/o Nankuram Shed No. 1,
Gandhinagar, Habibganj,
Bhopal …Workman

*Versus*

The Divisional Manager,
Telecom, Arera Hills,
Telephone Exchange,
Bhopal (MP) …Management

**AWARD**

Passed on this 3rd day of July 2013

As per letter dated 4-5-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D.Act, 1947 as per Notification No. L-40012/53/2001-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Divisional Manager, Telecom Bhopal in terminating the services of Shri Singhasan Ram S/o Shri Kishore Ram *w.e.f.* March, 1998 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference notices were issued to the parties. Workman submitted statement of claim at page 2/1 to 2/5. The case of Ist Party workman is that he was employed in Railway Electrification Project of department as casual labour from September 86 to February 88. Without assigning any reason, he was prevented from discharging his duty from March 1988. That several circulars are issued for regularization and giving temporary status to casual muster roll labours upto 22-6-88. The circulars were issued as per directions issued by Apex Court. That he was working for 240 days during the 12 calendar year preceding his discontinuation of service. He was not given one months notice, he was not paid wages in lieu of notice. He was not paid retrenchment compensation. His services are terminated in violation of Section 25-F of I.D. Act. That employing causal labours temporary employees for unreasonably longer period amounts to exploitation. For said reason, Hon'ble Apex Court had issued directions to prepare a scheme on national basis for absobing casual labours. Therefore it is incumbent on department to regularize services of the workman. That Section 25-F & N are violated while terminating his services, Article 14,15 and constitution are also violated. On such grounds, workman prays that his termination be set-aside. He may be requested with consequential benefits.

3. IInd party filed written statement denying claim of the workman. That Railway electrification Project was for short period. The workman was knowing about it. It is denied that Ist party workman was working as casual labour, no card was issued to the workman. It is denied that workman was prevented from discharging his duty from March 1998. That the workman was not available. The circulars issued by the respondents in respect of regularization/temporary status but the workman doesnot fall within the limit of circulars.

4. IInd party submits that there was no question of issuing termination order or payment of retrenchment compensation. It is reiterated that workman was not fulfilling eligibility for regularization of his services as per the circulars issued. The workman was working on daily wages subject to availability of work. The workman was aware that workman of the project was for short period. The workman was not appointed neither he was terminated. He is not entitled to reinstatement. IInd party prayed for rejection of claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|---|---|---|
| (i) | Whether the action of the management of Divisional Manager, Telecom Bhopal in terminating the services of Shri Singhasan Ram S/o Shri Kishore Ram *w.e.f.* March 1998 is legal? | In Negative |
| (ii) | If so, to what relief the "workman is entitled to?" | As per final order. |

**REASONS**

6. 1st Party workman is challenging his termination from march 1988. He claims to be continously working with the IInd party from Sept. 86 to Feb. 88. IInd party denied above contentions. The workman filed affidavit of his evidence stating that he was working as casual labour with IInd party from 21-9-86 to Feb-88. He was has also submitted that he was continuously working. He was paid salary through voucher receiving Rs. 320 per month. The service card filed Exhibit W-1 consisting 4 pages without assigning any reason or giving him opportunity of hearing the services are terminated in violation of the law. He was not paid retrenchment compensation, he was not paid wages in lieu of notice, permission from appropriate Government was not obtained. His services are terminated in violation of Section 25-F of I.D. Act. He is not gainfully employed. In his cross-examination, he says that he received continuation upto Vth Standard. That the affidavit was submitted in Hindi. That no Written Examination was held for the post he was working. His name was sponsored through Employment Exchange. Initially he was working in telephone lines from Devathiya to Simari. thereafter he worked at Hoshangabad, Bhangara and Bhopal. He was paid wages for the working days till 1987. He was working in Railway Electrification Project. Thereafter he was shifted to Bhopal. He denied suggestion of IInd party that he himself left the job. The evidence of workman that he was continously working from 22-9-86 to Feb. 1988, he was discontinued from March 88 remained unchallenged. His evidence that he had worked form more than 240 days continously and compliance of Section 25-F of I.D. Act is neceassary also remained unchallenged. The workman is his evidence stated that he has produced copy of the Identity Card-Exhibit W-1 also remained unchallenged.

7. Management's witness Shri S.M. Garg in his evidence says that Railway Electrification Project was short term project. The work assigned for erection and dismantling lines and wires. Applicant is aware that his project is temporary/short period. The witness denied that casual labour were issued Identity Cards. That workman was

engaged on daily wages subject to availability. The evidence of management's witness doesnot disclose the working days. In his cross-examination, management's witness says that present case is for regularization during 1986 to 1988, he was posted in office of Director at Bhopal. He was not working in the field. He doesnot know the workman. No notice for termination was given. The workman was not paid compensation. Daily wagers attendance is marked in muster roll, witness was unable to tell how many days workman was working. Thus to sum up the evidence of workman about his working as casual employee from Sept. 86 to Feb. 88. That he worked 240 days continuously before termination remained unchallenged. Management's witness says that he has no knowledge about working days of workman, it can be seen only from the muster roll. The copy of muster roll is not produced. From above, it is clear that there is no reason to disbelieve the evidence of workman that he worked for 240 days continuously before his termination, his services is terminated without paying notice pay, retrenchement compensation etc. It amounts to illegal retrenchment.

8. The terms of reference relates to legality of termination of services of workman and not for regularization. As per the pleadings of the parties from reasons discussed above, it is clear that services of workman are terminated in violaltion of Section 25-F. Therefore the action of the management cannot be said legal. For above reasons, I record my finding in Point No. 1 in Negative.

9. Point No. 2- In view of my finding in Point No. 1, the termination of services of workman is illegal being in violation of Section 25-F of I.D. Act, now the Question arises as to what relief workman is entitled? As per evidence, workman was working as casual employee from Sept. 86 to Feb. 88 for about 1 $^{1}/_{2}$ years. Workman is out of employment since more than 24 years.

10. Learned counsel for IInd party Mr. Kapoor submits that workman is not entitled for reinstatement, relief of compensation may be appropriate. Reliance is placed in ratio held in case of.

> "Senior Superintendent Telegraph (Traffic) Bhopal *versus* Santosh Kumar Seal and others reported in 2010 (6) Supreme Court Cases 733. Their Lordship dealing with the point of reinstatement with back wages held relief by way of reinstatement with back wages not automatic even if termination of employee is found to be illegal or in contravention of the prescribed procedure and monetary compensation in cases of such nature may be appropriate. On facts as the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2-3 years, relief of reinstatement and back wages to them cannot be said to be justified. Monetary compensation of Rs. 40,000/- was directed to be paid."
>
> In case of Ramesh Kumar *versus* State of Haryana reported in 2010 (1) Supreme Court Cases (L&S) 420. Their Lordship held that appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment, contention that initial appointment of appellant was contrary to recruitment rules and constitutional scheme of employment was not raised either before Labour Court or High Court at the first instance, appellant had not prayed for regularization but only for reinstatement with continuity of service to which he is legally entitled. In addition to factual conclusion by Labour Court that appellant had worked the required 240 days, appellant also showed that persons similarly situated had been reinstated and regularized. Hence Labour Court's direction for reinstatement with continuity of service upheld, but with concession of workman to forego back wages."

In present case, considering short spam of service of 1st party workman as casual labour for about 1 $^{1}/_{2}$ years, his reinstatement with back wages is not appropriate. Considering the days of his service and termination of his service is in violation of Section 25-F of I.D. Act, compensation Rs. 60,000/- would be appropriate in addition to pay in lieu of notice and retrenchment compensation for 23 days wages. Accordingly I record my finding on Point No. 2.

11. In the result, award is passed as under:—

(1) The action of the management of Divisional Manager, Telecom Bhopal in terminating the services of Shri Singhasan Ram S/o Shri Kishore Ram *w.e.f.* March 1998 is illegal.

(2) IInd party management is directed to pay compensation Rs. 60,000 one month's notice pay and retrenchment compensation for 23 days.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 749.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, डिपार्टमेंट ऑफ टेलिकॉम, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/89/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/34/2001-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 749.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/89/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Telecom, Bhopal and their workman, which was received by the Central Government on 03/02/2014.

[No. L-40012/34/2001-IR(DU)]
P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**No. CGIT/LC/R/89/2001**
SHRI R.B. PATLE, Presiding Officer

Shri Radheshyam Rathore,
S/o. Shri Ramchandra Rathore,
R/o Machalpur,
Rajgarh ....Workman

*Versus*

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
MP Circle, Bhopal.

TDE,
Rajgarh, At. Biaora,
Rajgarh ....Management

**AWARD**

(Passed on this 2nd day of July, 2013)

1. As per letter dated 27-4-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/34/2001/IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Telecom Distt. Engineer, Biaora in terminating the services of Shri Radheyshyam Rathore, S/o Ramchandra Rathore *w.e.f.* December 1995 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist Party filed statement of claim at Page 4/1 to 4/4. The case of workman is that he was working as casual labour with IInd Party No. 2 & 3 from March 1989. He was working under S.I.T. Mohd. Ahmed, S.D.O.T. Shri Altaf Hussain and J.T.O. Shri Kuraishi. He was doing the work of local fault maintenance. As per judgement in AIR-1987-234, directions were issues to frame scales for regularization of services of casual employees. It is further submitted that workman was working with different employees at Rajgarh Exchange, Khilchipur Exchange, Machalpur Exchange alongwith other employees. That his services were terminated without holding any kind of enquiry. He was not given notice or pay in lieu of notice, retrenchment compensation was not paid. He has completed 240 days continuous service prior to retrenchment of his services. His services were orally terminated. It amounts to illegal retrenchment. That workman was paid Rs. 1035/- per month less than minimum wages and he was exploited. On such contentions workman prayed for his reinstatement with back wages.

3. IInd Party management filed Written Statement at Page 8/1 to 8/2. IInd party submits that workman was engaged by management as casual labour for specific work and specific period. As the work was convenient, his services were automatically discontinued by the management. There was no question of giving one month's notice or payment of retrenchment compensation. That workman had never completed 240 days service in any calendar year. In 1989 he worked for 154 days, in 1990 for 128 days, in 1991 for 164 days and in 1992 for 23 days.

4. It is further submitted that applicant doesnot fulfil conditions of the scheme for regularization of casual employees or even for status of casual worker. That workman was not engaged prior to 30-3-85. They had not completed 240 days continuous service required for regularization. The scheme was extended for casual workers vide order dated 21-6-93. The benefit was extended to the employees engaged between 31-3-85 to 22-6-88 or the employees continuing till 25-6-93. That applicant was not engaged between the said period. He was not continued on work till 25-6-93. Workman is not entitled to reliefs prayed by him.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|---|---|---|
| (i) | Whether the action of the management of Telecom Distt. Engineer, Biaora in terminating the services of Shri Radheyshyam Rathore S/o Ramachandra Rathore *w.e.f.* December 1995 is legal? | In Affirmative |
| (ii) | If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

**REASONS**

6. As per the terms of reference, legality of termination of services of workman needs to be decided. Workman submitted statement of claim contending that he was working from March 1989 till December 1995 as casual employee. His services were orally terminated in violation of Section 25-F of I.D. Act. Workman fails to adduce evidence in support of his claim. Evidence of workman was closed on 26-4-2011. The management filed affidavit of its witness Ramjani Khan. The witness of the management has stated that the workman had not completed 240 days service on one calendar year. The break up of working days in 1989 he worked for 154 days, in 1990 for 128 days, in 1991 for 164 days and in 1992 for 23 days. The evidence of management's witness remained unchallenged as witness was not cross-examined on behalf of workman. I do not find reason to disbelieve unchallenged evidence of management's witness. As workman has not completed 240 days continuous service preceding his termination. The violation of Section 25-F of I.D. Act is not established. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

(1) Action of the management of Telecom Distt. Engineer, Biaora in terminating the services of Shri Radheshyam Rathore S/o Ramachandra Rathore *w.e.f.* December 1995 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 750.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, डिपार्टमेंट ऑफ टेलिकॉम, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर, के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/31/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 2/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/245/2000-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 750.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/31/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Telecom, Bhopal, and their workman, which was received by the Central Government on 03/02/2014.

[No. L-40012/245/2000-IR(DU)]

P. K.VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**No.CGIT/LC/R/31/2003**

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Indergeer,
S/o Shri Kalugeer,
Vill-Giroli, Tehsil Barod,
P.O. Lala, Thana Barod,
Distt. Shajapur. … Workman

*Versus*

Chief General Manager,
Deptt. of Telecom,
Hoshangabad Road,
MP Circle, Bhopal ...Management

**AWARD**

(Passed on this 24th day of January 2014)

1. As per letter dated 4-2-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/245/2000-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Chief General Manager, Telecom Bhopal in terminating the services of Shri Indergeer, S/o Shri Kalugeer *w.e.f.* November 1995 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was working as casual labour with IInd party No. 3 from January 1988. IInd party No. 2 takes policy decision that regularization of casual labours was approved by the department in pursuance for judgment by Hon'ble High Court reported in AIR 1987-SC-2342. The scheme for regularization of casual employees was introduced on 7-11-89. As per said scheme, the employees working prior to 30-3-85 were entitled to be absorbed. IInd party orally terminated services of Ist party from November 1991 in violation of Section 25-F of I.D. Act. The domestic enquiry was not conducted against him.

3. Workman submits that he had completed 240 days continuous service. He was not paid retrenchment compensation. His services are orally terminated, he was

paid wages Rs. 1800/- per month, less than the minimum wages. He was subjected to exploitation. On such ground, he submits that termination of his service is illegal. He prays for reinstatement.

4. IInd party has filed Written Statement at Page 10/1 to 10/2. IInd party denied that workman worked as casual employee at any time. It is denied that Ist party workman appointed as labour in the Division from January 88. It is denied that workman worked in division. There was no question of taking policy decision. There is no question of regularization of workman. There is no point of satisfactory working by workman before termination of his service. It is denied that workman had completed 240 days continuous service. There was no question of payment of retrenchment compensation to him. There was no question of payment of wages less than minimum wages prescribed. On such ground, IInd party prayed for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | |
|---|---|
| (i) Whether the action of the management of Chief General Manager, Telecom Bhopal in terminating the services of Shri Indergeer, S/o Shri Kalugeer *w.e.f.* November 1995 is legal and justified? | In Affirmative |
| (ii) If not, what relief the Workman is not entitled | Workman is not entitled to any relief. |

**REASONS**

6. Workman is challenging termination from service for violation of Section 25-F of I.D. Act. Though workman has pleaded for regularization of casual employees, it is beyond the terms of reference and needs no consideration. IInd party had denied workman was engaged by department as casual labour or the workman had completed 240 days continuous service. Workman filed affidavit of his evidence covering most of his contentions in statement of claim. But he remained absent and failed to make available for cross-examination, evidence of workman was closed on 14-1-2012. Management filed evidence on affidavit of witness Shri Bhagchand Joshi. Workman remained absent and failed to cross-examine management's witness. The evidence of management's witness is in nature of denial of engagement of workman by department. As workman failed to make available for cross-examination, his evidence cannot be considered. Evidence of management's witness remained unchallenged. I find no reason to disbelieve his evidence. For above reasons I record my finding on Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

(1) Action of the management of Chief General Manager, Telecom Bhopal in terminating the services of lShri Indergeer, S/o Shri Kalugeer *w.e.f.* November 1995 is legal.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 751.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डीवीसोनाल इंजीनियर, टेलिकॉम, ग्वालियर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/217/91) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2014 को प्राप्त हुआ था।

[स॰ एल-42012/102/91-आईआर (डीयू)]
पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 751.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/217/91) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between employers in relation to the the management of The Divisional Engineer, Telecom, Gwalior and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/102/91-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, JABALPUR**

**No. CGIT/LC/R/217/91**
Presiding Officer, SHRI R.B. PATLE

Shri Kailash Chandra Rajoria,
S/o Shri Arjun Rajoria,
Gram : Guta, Lashkar,
Gwalior ....Workman

*Versus*

The Divsional Engineer,
Telecom,
Moti Mahal,
Chambal Division,
Gwalior .....Management

**AWARD**

**(Passed on this 24th day of January 2014)**

1. As per letter dated 12.11.91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/102/91-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Divisional Engineer, Telecom, Chambal Sambhag, Gwalior in terminating the services of Shri K.C. Rajoria was justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist Party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was working on daily wages in Sub-Divisional Telecom Office, Shivpuri from 1-12-1986, he was working with devotion, he was orally discontinued by IInd Party from 1.8.88. His discontinuation is illegal. He was not served one month's notice, he was not paid one month's pay in lieu of notice, retrenchment compensation was not paid to him. Termination order in writing was not issued by IInd party. He had completed 240 days continuous service. Termination of his service is in violation of Section 25-F, H & N of I.D. Act. On such grounds, Ist Party workman prays for his reinstatement with consequential benefits.

3. IInd Party filed Written Statement at Page 7/1 to 7/2. IInd party submits that workman was purely engaged as contract labour temporarily from December 86 without written order. Workman was engaged as casual labour for specific work. There was no written agreement between workman and management. After the work is finished, his services were discontinued. One month's notice for termination is not required as workman were engaged as casual labour.

4. Management further submits that as per judgment by Apex Court, scheme for regularization of casual labour is framed in 1989 as per said scheme only casual labour who fulfil conditions he was engaged by 30.3.85 on 7.11.89 as casual labour. He having completed 240 days service in a year are covered for regularization. Ist Party workman is not entitled to retrenchment compensation. IInd Party denies that workman was terminated from service. Workman was engaged as casual labour. He was discontinued after completion of work. His discontinuation of workman is covered under Section 2 (oo) of I.D. Act and doesnot amount to retrenchment. On such ground , IInd Party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | |
|---|---|
| (i) Whether the action of the management of Divisional Engineer, Telecom, Chambal Sambhag, Gwalior in terminating the services of Shri K.C. Rajoria was justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

**REASONS**

6. Ist Party workman is challenging termination of his services for violation of Section 25-F, H & N of I.D. Act. He claims to have been completed 240 days continuous service. Workman was not served with termination notice, retrenchment compensation not paid, management denied above contentions of workman. Rather as per management, the workman was engaged as casual employee. He is not entitled to termination notice or retrenchment compensation. Workman filed affidavit of his evidence on 28.4.05. However' he failed to remian present for his cross-examination. The ordersheet dated 9.6.06 clearly shows that for absence of workman for cross-examination, his affidavit shall not be read in evidence. Thus, evidence adduced by workman on affidavit cannot be considered for his failure to appear for cross-examination. The affidavit of witness Shri R.K. Shrivastava for management is covering most of the contentions of management in its Written Statement. Counsel for workman remained absent and failed to cross-examine witness. I find no reason to disbelieve evidence of management's witness.

7. Though large number of citations are submitted in bunch by counsel for management. As evidence of workman cannot be read for his failure to remain present for cross-examination, there is absolutely no evidence to substantiate claim of workman that termination of his services suffers from any kind of illegality. Therefore, I am not inclined to discuss the citations submitted by the management. For reasons discussed above, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(1) Action of the management of Divisional Engineer, Telecom, Chambal Sambhag, Gwalior in terminating the services of Shri K.C. Rajoria is proper and legal.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 752.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 04/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[स॰ एल-17012/33/2004-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 752.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 10.02.2014.

[No. L-17012/33/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGTT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/04/2005 Date: 22 .01 2014

**Party No.1**: (a) The Regional Manager,
United India Insurance Co. Ltd.
Regional Office, Ambika House,
19, Dharampeth Extention Shankar
Nagar Square, Nagpur-10 (MS)

(b) The Divisional Manager,
United Insurance Co. Ltd.,
Western Zone, Nagpur Branch,
Divisional, Office No. 1
Saraf Chambers, Mount Road
Extension, Sadar, Nagpur-1 (MS)

*Versus*

**Party No. 2**: The Branch Secretary,
General Insurance Employees' Union,
Western Zone, Nagpur Branch,
C/O UIICL, Nagpur Regional Office,
Ambica House, 19, 4th floor,
Dharampeth Extention Shankar Nagar
Square, Nagpur-10 (M S).

**AWARD**

(Dated: 13th January, 2014]

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of United India Insurance Co. Ltd. and the workman Shri Mohd. Iqbal S/o. Sh. Mohd. Ismail for adjudication, as per letter No. L-17012/23/2004-IR (B-I) dated 20.12.2004, with the following schedule:—

> "Whether the action of the management of M/s. United India Insurance Co. Ltd., Nagpur (M.S.) in terminating the services of Sh. Mohd. Iqbal S/o. Sh. Mohd. Ismail casual worker, *w.e.f.* 01.12.2003 without following the provisions of section 25-F of the Industrial Dispute Act, 1947 is proper and justified? If not, to what relief the workman concerned is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Sh. Mohd. Iqbal, ("the workman" in short) filed the statement of claim and the management of United India Insurance Co. Ltd., (here-in-after referred to as the "Party No. 1") filed its written statement.

The case of the workman as presented in the statement of claim is that he was employed by party No. 1(b) in its establishment against a regular post *w.e.f.* 13.10.2000 on daily wages basis and he worked continuously till 31.12.2003 and wages was being paid to him weekly basis including the weekly off days and holidays of the office, as per the standing practice and circular of the department to that effect and he had completed more than 240 days attendance in each year up to 30.11.2003 and after completion of two years of service, he demanded for permanency and he was a workman as per the definition of section 2 (s) of the Act and party No.l (b) terminated his services on 01.12 2003 without following the due procedure of law and therefore, on his behalf, the union raised the industrial dispute under section 2-A of the Act and during the course of the conciliation, the party No. l was advised to consider the matter, but party No.l raised the objection of his being over aged, which shows that the post in which he was working was still available at that point of time and he entered into the service of party No.l at the age of 24 years and the age at the time of entry into service is relevant for consideration for permanency.

It is to be mentioned here that the workman without making any prayer for reinstatement in service has made a peculiar prayer. He has prayed for giving due opportunities to defend, which does not mean anything.

3. The parties No. 1 (a) and 1 (b) have filed a joint written statement pleading *inter-alia* that the workman was not a workman as contemplated under the Act and there was no employer-employee relationship between them and the workman and neither any letter of appointment nor contract of appointment, express or implied was issued to the workman and the workman was engaged on daily wages basis for cleaning the office premises and for bringing water, in the absence of the regular part time/full time sweeper, as and when required, purely as a stop gap arrangement and thus his discontinuation was not removal or termination of his services as alleged and the workman was not employed in their establishment at any time on regular basis and therefore, the regularisation of the workman does not arise and the age limit for appointment of sub-staff/full time sweeper is 35 years and the workman is already more than 37 years of age and as the workman worked purely on temporary basis, there was no question of following the procedure contemplated under the Act and the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has examined one Ramsumiran B. Yadav as a witness besides him self as a witness. Shri Surenderjit Singh Sandhu, a Development Officer has examined as the only witness on behalf of the party No. 1.

5. In his evidence on affidavit, the workman has stated that he worked continuously and uninterruptedly as casual employee with party No. 1 *w.e.f.* 1310.2000 till 28.11.2003 and he was orally terminated *w.e.f.* 01.12.2003, without notice and without payment of any retrenchment compensation, in breach of the provisions of the Act and in the preceding one year before his termination on 01.12.2003, he had worked for 298 days and he had also worked for more than 240 days in each year.

In his Cross-examination, a suggestion was given to him that he was working as a gap arrangement from 01.04.1989 and the workman admitted the same. The workman has admitted that no written appointment letter was issued by the management for his engagement on 13.10 2000 and his date of birth is 25.06.1965 and he was getting Rs. 25/- per day for working days.

6. The other witness examined on behalf of the workman in his evidence on affidavit has stated that the workman worked in the division office No. 1 as casual worker in the vacancy of sub-staff from October, 2000 to November, 2003 and prior to that also, the workman had worked as water boy from time to time in summer season. In his Cross-examination, this witness has stated that he was working as a clerk in the office during the period from 2000 to 2003 and he was not dealing with the attendance of the employees and he cannot say if any appointment order was issued in favour of the workman.

7. The witness for the party No. 1 in his evidence on affidavit has reiterated the facts mentioned in the written statement. In his Cross-examination, the workman was engaged for giving water and tea to the employees of the office, to fill water in the coolers and to do all odd jobs and the workman was working as a peon.

8. Besides the oral evidence, nine documents have been produced by the workman in support of his case. The said documents have been admitted into evidence on behalf of the workman on admission by the Party No. 1 and marked as Exts. W-I to W-IX.

9. In this case, the workman himself has pleaded that he was engaged as a daily wager *w.e.f.* 13.10.3000 and he worked as such till 30.11.2003 and he was orally terminated from service on 01.12.2003, without compliance of the mandatory provisions of section 25- F of the Act and before his termination on 01.12.2003, he had worked for 298 days and he had also worked for more than 240 days in each year.

Party No. l has denied such claim. According to Party No. l the workman was engaged on daily wages as and when required and he had not worked for 240 days in the preceding 12 calendar months of the alleged date of termination.

It is well settled that service for 240 days in a period of 12 calendars months is equal not only to service for a year, but is to be deemed continuous service even if interrupted. Therefore, though S.25-F speaks of continuous service for not less than one year under the employer, both conditions are fulfilled, if the workman has actually worked for 240 days during a period of 12 calendar months.

It is also well settled that before a workman can complain of retrenchment being not in consonance with section 25-F of the Act, he has to show that he has been in continuous service for not less than one year under that employer who has, retrenched him from service.

10. As already mentioned ahove, in order to prove his case, the workman has adduced both oral and documentary evidence.

On perusal of the evidence of the workman, it is found that the workman has categorically stated that he had filed documents No. 6 (Ext W-VI) which was provided by party No. 1, showing the details of the days he worked under the Party No. 1 from 13.10.2000 to 23.02.2003. The workman has also furnished the details of the days he worked from 24.02 2003 till 28.11.2003 under Party No.l in his evidence on affidavit. He has further stated that in the preceding 12 calendar months of his date of termination on 01.12.2003, he had worked for 298 days. Such assertion of the workman has not at all been challenged in the cross-examination

Likewise, the assertion of the other witness examined on behalf Ihe workman that the workman worked as a casual worker from October, 2000 to November, 2003 under party No. 1 has also not been seriously challenged in his cross-examination.

11. So far the documentary evidence is concerned, on perusal of the same, it is found that the document, Ext. W-IX clinches the issue in favour of the workman. Ext. W-IX is a letter written by the Assistant Manager, Personnel Department, Regional Office, Nagpur to the Personnel Department, Head Office, Chennai of Party No 1. In the said letter, it has been specifically mentioned that the workman was engaged as a casual daily wager from 13.10.2000 till 30.11.2003, As already mentioned Ext. W-IX has been admitted into evidence and marked as exhibit on behalf of the workman on admission by the Party No. 1.

In view of the document, Ext. W-IX, the evidence of the witness examined by party No. l. that the workman did not work for 240 days in the preceding 12 months of the date of his alleged termination cannot be relied on.

From the oral evidence coupled with the documentary evidence as mentioned above, it is found that the workman has been able to prove that in fact he had worked for more than 240 days in the preceding 12 calendar months of 01.12.2003, the date of his termination from services.

Admittedly, in this case, before the termination of the services of the workman, the mandatory provisions of section 25-F were not complied with. Hence, the termination of the workman from services is illegal. The workman was entitled for the protection as given in section 25-F of the Act.

12. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

At this juncture, I think it proper to mention about the recent decision of the Hon'ble Apex Court as reported in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation *Vs*. Gitam Singh). In the said decision the Hon'ble Apex Court have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh *Vs.* Municipal Council, Sonaur, on which reliance has been placed by the workman), (2010) 3 SCC-192 (Harjinder Singh *Vs.* Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty.]

The Hon'ble Apex Court have been pleased to hold that:—

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must fall. This court found in those cases that judicial discretion exercised by the labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager on 13.10.2000 to 30.11.2003. It is also found that he continued as such till 30.11.2003, when he was terminated from services by party No. 1. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in opinion, the compensation of Rs. 100000/- (Rupees one lakh only) in lieu of reinstatment shall be appropriate, just and equitable. Hence, it is ordered:—

**ORDER**

The action of the management of M/s. United India Insurance Co. Ltd., Nagpur (M.S.) in terminating the services of Sh. Mohd. Iqbal S/o Sh. Mohd. Ismail, casual worker, *w.e.f.* 0l.12.2003 without following the provisions of section 25 F of the Industrial Dispute Act, 1947 is improper and unjustified. The workman is entitled for monetary compensation of Rs. 1,00,000/- (Rupees one lakh only) in lieu of reinstatement. He is not entitled for any other relief. The party No. 1 is directed to pay the monetary compensation of Rs. 1,00,000/- to the workman Sh. Mohd. Iqbal within 30 days of the publication of the award in the Official Gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 753.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजर, (ह र डी), हिंदुस्तान केबल्स लिमिटेड एंड ऑथर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 46/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/32/2009-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 753.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 46/2009) of the Cent. Govt. Indus. Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[F.No. L-42012/32/2009-IR(DU)]

P.K VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**Present:** **DR. MANJU NIGAM,**
Presiding Officer

I.D. No. 46/2009
**Ref. No. L-42012/32/2009-IR (DU)**
**dated: 09.10.2009**

**Between:** Shri Ram Suchit Bind
Village Khameniya, Post Avta
Allahabad,

**AND**

1. The Manager,
HRD, Hindustan Cables Limited, Naini
Allahabad.

2. The Manager
M/s. Industrial Security Services
4, Stratchy Road
Allahabad.

**AWARD**

1. By order No. L-42012/32/2009-IR(DU) dated: 09.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Ram Suchit Bind, Village Khameniya, Post Avta, Allahabad and the Manager, HRD, Hindustan Cables Limited, Naini, Allahabad & the Manager, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Ram Suchit Bind is Sham and Bogus? If yes, whether the action of the management in terminating his services *w.e.f.* 26/10/1999 is legal and justified? If not, what relief the workman is entitled to?"

3. The case of the workman, Ram Suchit Bind, in brief, is that he was appointed as a security guard with the opposite party on 19.10.1994 and worked continuously, with some artificial break, till 25.10.1999; and he was restrained from working by the Security Officer of the management *w.e.f.* 25.10.1999. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite Party No. 01 *viz.* M/s. Hindustan Cables Ltd.: and accordingly, there was relationship of employee and employer between him and the opposite Party No. 01. It is further been submitted by the workman that he was paid through its illegal agent *i.e.* opposite party No. 02 *viz.* M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 01 terminated his services without following the provisions of Section 25 F of the I.D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 01 has dispute the claim of the workman by filling it written statement; whereas the opposite Party No. 02 *viz.* M/s. Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act, 1970; and the opposite Party No. 02 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act. The opposite Party No. 01 has specifically submitted that it has neither engaged he workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I.D. Act. It is submitted by the opposite party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite Party No. 02 *viz.* M/s. Industrial Security Services was assigned job contracts dated 27.09.1990. 01.10.1995 and 30.03.1999. It has been stated by the opposite party No. 01 that it had never paid any wages to the workman; rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite

Party No. 01 used to make payment to the opposite Party No. 02 and thereafter, the workman was being paid by the opposite Party No. 02; likewise, the opposite No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite party No. 01 and the workman. It has also been submitted by the opposite Party No. 1 that the contract between opposite party No. 1 and opposite Party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite Party No. 01 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself, whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S.N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 01 on 19.10.1994 as Security Guard and worked as such till 25.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25 F of the I.D. Act, 1947.

10. In rebuttal, the opposite Party No. 01's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s. Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s. Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 19.10.1994 after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL. He has stated that paper No. 9/40 to 9/43 is the page of this pass book (Provident Fund) and it bears name of Industrial Security Services as office's name. It was also stated that paper No. 9/25 to 9/38 is salary slip, which is filed by him; whoever he has denied office's name mentioned as ISS *i.e.* Industrial Security Services. He has also admitted that paper No. 16/67 to 16/69 bears his signatures. He also stated that he did not receive any order or removal from the HCL. He also stated that he was not given any identity Card by HCL.

13. The managemet witness, Shri Sanjeev Ratan. Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness. S.N. Lakhorkar stated that opposite Party No. 1 given the security work contract to M/s. Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1998 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was temporary guards of M/s. Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per presdcribed procedure in the recruitment policy. He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were

supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of the following documents:—

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal, Allahabad.

(iii) Pass Book of EPF.

(iv) Payment Slip.

15. Per contra, the opposite Party No. 02 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite Party No. 01 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite party No. 2 *i.e.* M/s. Industrial Security Services whose services as Security Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. It is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite Party No. 01 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e.* M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:

(i) Copy of Job Contract/Agreement dated 30.03.1999, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract *w.e.f.* 30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy to bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 34/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs.* Ram Suchit Bind Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with the regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention, the management of M/s. HCL has filed photocopies of registration certificate under Contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing 'security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990, 30.06.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 01 and opposite Party No. 02; rather he has pleaded that he was appointed by the opposite party No. 01 and was an employee of the opposite Party No. 01. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s. Hindustan Cable Ltd. On the contrary he has come up

with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

17. In view of the discussions made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman *w.e.f.* 26.10.1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another Vs. Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of Section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of Section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salarly or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under Section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in Section 25 F of the Act, it is necessary for the claimant to lead evidence to the effect that the was actually in employment of the opposite party for 240 days in the year proceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 34/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs.* Ram Suchit Bind goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdication of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendace register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e.* EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite Party No. 1.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that the workman was an employee of the opposite Party No. 02 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite Party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Ram Suchit Bind was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite Party No. 1 *viz* M/s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor *viz.* M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd. The reference under adjudication is answered accordingly.

23. Award as above.

Dr. MANJU NIGAM, Presiding Officer

Lucknow
25th November, 2013.

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 754.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर (एच आर डी), हिन्दुस्तान केबल्स लिमिटेड एण्ड ऑदर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 41/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/38/2009-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 754.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947 of 1947), the Central

Government hereby publishes the award (I.D. No. 41/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow, now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/38/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 41/2009**
Ref. No. L-42012/38/2009-IR(DU)
dated: 30.09.2009

**BETWEEN:** Shri Anant Bahadur Singh
S/o Shri Jagdmba Singh,
Village and Post Khadsara, Allahabad.

**AND**

1. The Manager (HRD),
Hindustan Cables Limited,
Naini, Allahabad.

2. The Manager,
M/s. Industrial Security Services,
4. Stratchy Road,
Allahabad.

**AWARD**

1. By order No. L-420l2/38/2009-IR(DU) dated 30.09.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by cause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Anant Bahadur Singh S/o Shri Jagdmba Singh, Village and Post Khadsara, Allahabad and the Manager, HRD, Hindustan Cables Limited, Naini, Allahabad & the Manager, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Anant Bahadur Singh is Sham and bogus? If yes, whether the action of the management tn terminating his services *w.e.f.* 17/10/1999 is legal and justified? If not, what relief the workman is entitled to?"

3. The case of the workman, Anant Bahadur, in brief, is that he was appointed as a security guard with the opposite party on 22.06.1989 and worked continously with some artificial break, till 16.10.1999; and he was restrained from working by the Security Officer of the management *w.e.f.* 17.10.1999. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite Party No. 01 *viz*. M/s. Hindustan Cables Ltd.; and accordingly, there was relationship of employee and employer between him and the opposite Party No. 01. It is further been submitted by the workman that he was paid through its illegal agont *i.e*. opposite Party No. 02 *viz.* M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 01 terminated his services without following the provisions of Section 25 F of the I. D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 01 has dispute the claim of the workman by filing it written statement whereas the opposite Party No. 02 *viz.* M/s. Industrial Security Services did not turned up in spile of several registered notices. However notice sent by this Tribunal was received back with remark "left".

4. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer which is duly registered under the Contract Labour (Regulation and Abolition) Act, 1970, and the opposite Party No. 02 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act. The opposite Party No. 01 has specifically submitted that it has neither engaged the workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I. D. Act. It is submitted by the opposite Party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis accordingly the opposite Party No. 02 *viz.* M/s. Industrial Security Services was assigned job contracts dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite Party No. 01 that it had never paid any wages to the workman rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite party No. 01 used to make payment to the opposite Party No. 02 and thereafter, the workman was being paid by the opposite Party No. 02; likewise, the opposite No. 2 used to deduct the Provident Fund and ESI contribution in respect of

workman and deposit the same with the concerned authorities; hence there was no employer and employee relationship between the opposrte Party No. 01 and the workman. It has also been submitted by the opposite Party No. 1 that the contract between opposite Party No. 1 and opposite Party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accondingly, the opposite Party No. 01 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

5. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

6. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S. N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

7. Heard the authorized representatives of the parties and perused entire evidence available on record.

8. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 01 on 22.06.1989 as Security Guard and worked as such till 16.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25F of the I.D. Act. 1947.

9. In rebuttal, the opposite Party No. 01's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s. Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 01 neither appointed the workman nor terminated his servies; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

10. I have given my thoughtful consrderation to the rival contentions of the parties and perused entire evidence available on file.

11. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 22.06.1989 after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and afso the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL; however he was being paid salary by the HCL which amounted to approximately Rs. 2000/- per month. He has stated that paper No. 11/24 is the page of his pass pook (Provident Fund) and it bears the signatures and stamp ot Industrial Security Services. It was also stated that paper No. 11/36 to 11/37 is salary slip; wherein office's name is mentioned as ISS *i.e.* Industrial Security Services. He has also admitted that in the written statement filed by him before Labour Tribunal, he has mentioned this fact that he had been appointed in HCL through ISS.

12. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintians attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not employee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S. N. Lakhorkar stated that opposite Party No. 1 given the security work contract to M/s. Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always earned out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act. 1970. He has also stated that the workman was temporary guards of M/s. Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL

neither appoints any one nor removes any one, the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

13. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of following documents:

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 2007, paper No 11/1 to 11/5;

(ii) Award dated 21.12.2006 of Industrial Tribunal, Allahabad, paper No. 11/6 to 11/23;

(iii) Pass Book of EPF, paper No. 11/24 to 11/34;

(iv) Payment Slip, paper No. 11/35 to 11/37.

14. Per contra, the opposite Party No. 02 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite Party No. 01 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite Party No. 2 *i.e.* M/s. Industrial Security Services whose services as Security Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. it is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite Party No. 01 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.6.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e.* M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:

(i) Copy of Job Contract/Agreement dated 30.03.1999, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract *w.e.f.* 30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officer etc.

(v) Copy to bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI Challan etc.

(vii) Copy of rejoinder in CP case No. 30/2002 between Anant Bahadur Singh *Vs.* M/s Hindustan Cables Ltd. & M/s. Industrial Security Services.

15. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention, the management of M/s. HCL has filed photocopies of registration certificate under Contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing 'security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990, 30.06.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 01 and opposite Party No. 02; rather he has pleaded that he was appointed by the opposite Party No. 01 and was an employee of the opposite Party No. 01. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

16. In view of the discussions made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

17. As regard second part of the reference regarding validity of termination of the services of the workman w.e.f. 17.10.1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and Another *Vs.* Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25-F of the Act, it is necessary for the claimant to lead evidence to the effect that the was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as Security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service change of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of rejoinder in CP case No. 30/2002 between Anant Bahadur Singh *Vs.* M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

18. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer *Vs.* S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

19. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellati & Asstt. Executive Engineer as follow:

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In case of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e*. EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite Party No. 01.

20. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that that the workman was an employee of the opposite Party No. 02 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite Party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust of illegal order of termination was passed by the management.

21. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Starchy Road, Allahabad, with regard to employment of Shri Anant Bahadur Singh was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite Party No. 1 *viz*. M/s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor *viz*. M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd. The reference under adjudication is answered accordingly.

22. Award as above.

LUCKNOW
25th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 755.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेनेजर (एचआरडी), हिंदुस्तान केबल्स लिमिटेड एंड अदर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 45/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/33/2009-आईआर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 755.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 45/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/33/2009-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:** Dr. MANJU NIGAM, Presiding Officer
**I.D. No. 45/2009**
Ref. No. L-42012/33/2009-IR (DU)
dated: 09.10.2009

**BETWEEN:** Shri Mohan Singh
EB-172, ADA Colony, Naini
Allahabad

**AND**

1. The Manager
HRD, Hindustan Cables Limited, Naini
Allahabad
2. The Manager
M/s. Industrial Security Services
4. Stratchy Road, Allahabad.

**AWARD**

1. By order No. L-42012/33/2009-IR (DU) dated: 09.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Mohan Singh. EB-172, ADA Colony, Naini, Allahabad and the Manager, HRD, Hindustan Cables Limited, Naini, Allahabad & the Manager, M/s Industrial Security Services, 4 Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Mohan Singh is sham and bogus? If yes, whether the action of the management in terminating his services *w.e.f.* 26/10/1999 is legal and justified? If not, what relief the workman is entitled to?"

3. The case of the workman, Mohan Singh, in brief, is that he was appointed as a security guard with the opposite party on 18.12.1995 and worked continuously, with some artificial break, till 25.10.1999; and he was restrained from working by the Security Officer of the management *w.e.f.* 25.10.1999. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal but perennial nature of work, and his work was being controlled and supervised by the officers of the opposite Party No. 01 *viz.* M/s. Hindustan Cables Ltd; and accordingly, there was relationship of employee and employer between him and the opposite Party No. 01. It is further been submitted by the workman that he was paid through its illegal agent *i.e.* opposite Party No. 02 *viz.* M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 01 terminated his services without following the provisions of Section 25-F of the I.D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 01 has dispute the claim of the workman by filing it written statement, whereas the opposite Party No. 02 *viz.* M/s. Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act, 1970; and the opposite Party No. 02 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act. The opposite Party No. 01 has specifically submitted that it has neither engaged the workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25-F of the I.D. Act. It is submitted by the opposite Party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite Party No. 02 *viz.* M/s. Industrial Security Services was assigned job contracts dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite Party No. 01 that it had never paid any wages to the workman; rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite Party No. 01 used to make payment to the opposite Party No. 02 and thereafter, the workman was being paid by the opposite Party No. 02, likewise, the opposite Party No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities hence, there was no employer and employee relationship between the opposite Party No. 01 and the workman. It has also been submitted by the opposite Party No. 1 that the contract between opposite Party No. 1 and opposite Party No. 2 came to an

end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite Party No. 01 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself, whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S. N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 01 on 18.12.1995 as Security Guard and worked as such till 25.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25 F of the I.D. Act, 1947.

10. In rebuttal, the opposite Party No. 01's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s. Industrial Security Services for supply of security personnel, and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 01 neither appointed the workman nor terminated his services, rather his employment was regulated by M/s. Industrial Security Services and the same came to an end with the end of contract with the agency, hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 20.12.1996 after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL; however he was being paid salary by the HCL which amounted to approximately Rs. 1650 per month in 1995. He has stated that paper No. 10/42 to 10/46 is the page of his pass book (Provident Fund) and it bears the signatures and stamp of Industrial Security Services. It was also stated that paper No. 10/1 to 10/42 is salary slip, wherein office's name is mentioned as ISS *i.e.* Industrial Security Services. He has also admitted that in the written statement filed by him before Labour Tribunal, he has mentioned this fact that he had been appointed in HCL through ISS.

13. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL; however the workman was security guard of the Industrial Security Services, and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S.N. Lakhorkar stated that opposite Party No. 1 given the security work contract to M/s. Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was temporary guards of M/s. Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL neither appoints any one nor removes any one. the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calendar

year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of following documents:

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal, Allahabad.

(iii) Pass Book of EPF.

(iv) Payment Slip.

15. Per contra, the opposite Party No. 2 has not turned up to contest the case since the very inception of the proceedings before this Tribunal, whereas the opposite party No. 1 has come with case that the workman concerned is not their employee, rather he is an employee of the opposite party No. 2 *i.e*. M/s. Industrial Security Services whose services as Security Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. It is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis, and accordingly, the opposite party No. 1 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f*. 01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e.* M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:—

(i) Copy of Job Contract/Agreement dated 30.03.1999, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract *w.e.f.* 30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy to bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 33/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs.* Mohan Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. That there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention the management of M/s. HCL has filed photocopies of registration certificate under Contract Labour of (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing security work through 41 workmen: and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01 05.1990, 30.06.2000. However there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services or supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 1 and opposite Party No. 2, rather he has pleaded that he was appointed by the opposite Party No. 2 and was an employee of the opposite Party No 1. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee *i.e.* the principle employer of M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/ s. Industrial Security Services has no existence.

17. In view of the discussions made herein move absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence. I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman *w.e.f.* 26.10.1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25 F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another *Vs.* Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 clays uninterruptedly, he is not entitled to protection in compliance of section 25 - F of the Industrial Disputes Act 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25F of the Act, it is necessary for the claimant to lead evidence to the effect that he was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 33/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs*. Mohan Singh goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer *Vs.* S.T. Hadimam Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (103) FLR R. M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the

workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgements further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e.* EPF pass book goes contry to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite Party No. 1.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that that the workman was an employee of the opposite Party No. 2 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite Party No. 2 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden there is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contact between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor. M/s. Industrial Security Services, 4, Stratchy Road, Allahabad with regard to employment of Shri Mohan Singh was neither sham nor bogus the workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite Party No. 1 *viz.* M/s. Hindustan Cables Ltd. rather from the evidence adduced it is established that he was and an employee of the contractor *viz*. M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd the reference under adjudication is answered accordingly.

23. Award as above.

LUCKNOW
25th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 756.—** औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर (ह र डी), हिंदुस्तान केबल्स लिमिटेड एंड ऑथर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/36/2009-आईआर (डीयू)]

पी॰के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 756.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 47/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to Phenahagoment. The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/36/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**

**LUCKNOW**

**PRESENT:** Dr. Manju Nigam,
PRESIDING OFFICER
I D No 47/2009
Ref No L-42012/36/2009-IR(DU)
dated: 09.10.2009

**BETWEEN** Shri Jagdish Narain Gaur
Village Khataingia, Post Jasra Allahabad

**AND**

1 The Manager
HRD, Hindustan Cables Limited, Naini, Allahabad

2. The Manager,
M/s Industrial Security Services
4. Stratchy Road Allahabad.

**AWARD**

1. By order No. L-42012/36/2009-IR(DU) dated 09.10.2009 the Central Government in the Ministry of Labour. New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Jagdish Narain Gaur, Village Khataingia, Post Jasra, Allahabad and the Manager HRD Hindustan Cables Limited. Naini, Allahabad & the Manager M/s Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Jagdish Narain Gaur is sham and bogus? If yes, whether the action of the management in terminating his services *w.e.f.* 26/10/1999 is legal and justified? if not, what relief the workman is entitled to?"

3. The case of the workman, Jagdish Narain Gaur, in brief, is that he was appointed as a security guard with the opposite party on 07.06.1996 and worked continuously, with some artificial break, till 25.10.1999, and he was restrained from working by the Security Officer of the management *w.e.f.* 25.10.1999. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite Party No. 1 *viz*. M/s. Hindustan Cables Ltd and accordingly, there was relationship of employee and employer between him and the opposite Party No. 01. It is further been submitted by [he workman that he was paid through its illegal agent *i.e.* opposite Party No. 2 *viz*. M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 1 terminated his services without following the provisions of Section 25-F of the I.D. Act. 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 1 has dispute the claim of the workman by filing it written statement; whereas the apposite Party No. 2 *viz*. M/s. Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act, 1970; and the opposite Party No. 2 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act The opposite Party No. 1 has specifically submitted that it has neither engaged he workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25-F of the I.D. Act. It is submitted by the opposite Party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite Party No. 2 *viz.* M/s Industrial Security Services was assigned job contracts dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite Party No. 1 that it had never paid any wages to the workman; rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite Party No. 1 used to make payment to the opposite Party No. 2 and thereafter, the workman was being paid by the opposite Party No. 2. likewise, the opposite No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite Party No. 1 and the workman. It has also been submitted by the opposite party No 1 that the contract between opposite Party No. 1 and opposite Party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite Party No. 1 has

prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan. Vice President of the Workers' Union and Shri S. N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of thieir respective stands The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 1 on 07.06.996 as Security Guard and worked as such till 25.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25 F of the I.D. Act 1947.

10. In rebuttal, the opposite Party No. 1's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s. Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 1 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s. Industrial Security Services and the same came to an end with the end of contract with the agency hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 07.06.1991 after interview and the duties performed by him were regular nature and no contract or such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL; however he was being paid salary by the HCL which amounted to approximately Rs. 1800/- per month. He has stated that paper No. 10/21 to 10/29 is his GPF pass book. He has also stated that he filed case before Industrial Tribunal also: wherein he fried written statement.

13. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S.N. Lakhorkar stated that opposite Party No 1 given the security work contract to M/s Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act. 1970. He has also stated that the workman was temporary guards of M/s Industrial Security Services and the HCL never entered into any contract with respect to (he services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor, likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination, it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without fallowing the mandatory provisions of the Industrial Disputes Act. 1947. In the support of his pleading he has filed photocopy of following documents:

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal, Allahabad.

(iii) Pass Book of EPF.

(iv) Payment Slip.

15. Per contra, the opposite party No. 2 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite party No. 1 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite party No. 2 *i.e*. M/s. Industrial Security Services whose services as Security Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. It is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite party No. 1 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.*01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e.* M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:

(i) Copy of Job Contract/Agreement dated 30-03-1999, 01-10-1995 and 27-09-1990.

(ii) Copy of letter regarding termination of contract *w.e.f.*30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letter issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy of bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 35/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs*. Jagdish Narain Gaur Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention, the management of M/s. HCL has filed photocopies of registration certificate under Contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing 'security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990 to 30.06.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite party No. 1 and opposite party No. 2; rather he has pleaded that he was appoint by the opposite party No. 1 and was an employee of the opposite party No. 1. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

17. In view of the discussions made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman

*w.e.f.*26.10.1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another *vs.* Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced and proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Dispute Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25F of the Act, it is necessary for the claimant to lead evidence to the effect that he was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 35/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *vs*. Jagdish Narain Gaur goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer *vs*. S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of

termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e.* EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 1.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that the workman was an employee of the opposite party No. 2 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite party No. 2 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stretchy Road, Allahabad, with regard to employment of Shri Jagdish Narain Gaur was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 1 viz. M/ s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd. The reference under adjudication is answered accordingly.

23. Award as above.

Lucknow
25.11.2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 757.—** औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेनेजर (ह र डी), हिंदुस्तान केबल्स लिमिटेड एंड ऑथर्स, अलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 48/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰-एल-42012/37/2009-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 757.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 48/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014

[No. L-42012/37/2009-IR(DU)]
P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT :** Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 48/2009**

Ref. No. L-42012/37/2009-IR(DU) dated: 08.10.2009

**BETWEEN**

Shri Ram Avadh Yadav
Vill. Kathinagar, PO Mu Grhi (Muraina)
Raibareli.

**AND**

1. The Manager
HRD, Hindustan Cables Limited, Naini
Allahabad.

2. The Manager
M/s. Industrial Security Services
4, Stratchy Road
Allahabad.

**AWARD**

1. By order No. L-42012/37/2009-IR(DU) dated: 08.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Ram Avadh Yadav, Vill. Kathinagar, PO Mu Grhi (Muraina), Raibareli and the Manager, HRD, Hindustan Cables Limited, Naini, Allahabad & the Manager, M/s Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s Hindustan Cables Ltd., Allahabad, and the contractor, M/s Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to Employment of Shri Ram Avadh Yadav is sham and bogus? If Yes, whether the action of the management in terminating his services *w.e.f.*22/01/2000 is legal and justified? If no, what relief the workman is entitled to?"

3. The case of the workman, Ram Avadh Yadav, in brief, is that he was appointed as a security guard with the opposite party on 18.11.1992 and worked continuously, with some artificial break, till 22.01.2000; and he was restrained from working by the Security Officer of the management *w.e.f.* 25.01.2000. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite party No. 1 *viz.* M/s Hindustan Cables Ltd.; and accordingly, there was relationship of employee and employer between him and the opposite party No. 1. It is further been submitted by the workman that he was paid through its illegal agent *i.e*. opposite party No. 2 *viz*. M/s Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite party No, 1 terminated his services without following the provisions of Section 25 F of the I.D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s Hindustan Cables Limited, Allahabad.

4. The opposite party No. 1 has dispute the claim of the workman by filing it written statement; whereas the opposite party No. 2 *viz*. M/s Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act, 1970; and the opposite party No. 2 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act. The opposite party No. 1 has specifically submitted that it has neither engaged he workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I.D. Act. It is submitted by the opposite party No. 1 that there has never been any sanctioned post of Security Guards in the M/s Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite party No. 2 *viz.* M/s Industrial Security Services was assigned job contracts dated 27.09.1990, 1.10.1995 and 30.03.1999. It has been stated by the opposite party No. 1 that it had never paid any wages to the workman; rather as per terms of contract, M/s Industrial Security Services used to submit its bill for payment and the opposite party No. 1 used to make payment to the opposite party No. 2 and thereafter, the workman was being paid by the opposite party No. 2; likewise, the opposite No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite party No. 1 and the workman. It has also been submitted by the opposite party No. 1 that the contract between opposite party No. 1 and opposite party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 1 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan,

Vice President of the Workers' Union and Shri S.N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite party No. 1 on 18.11.1992 as Security Guard and worked as such till 22.01.2000 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25 F of the I.D. Act, 1947.

10. In rebuttal, the opposite party No. 01's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my throughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s Hindustan Cables Ltd. On 18.11.1992 after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment/termination letter from HCL. He has stated that paper No. 10/1 to 10/8 is salary slip and paper No. 10/4 is his EPF pass book. He has also stated that paper No. 16/67 is claim statement which bears his signatures.

13. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an empolyee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendence and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S.N. Lakhorkar stated that opposite party No. 1 given the security work contract to M/s Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was temporary guards of M/s Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management withness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he filed photocopy of following documents:

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal, Allahabad.

(iii) Pass Book of EPF.

(iv) Payment slip.

15. Per contra, the opposite party No. 02 has not turned up to contest the case since the very inception of the providings before this Tribunal; whereas the opposite party No. 01 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite party No. 02 *i.e.* M/s. Industrial Security Services whose services as Security Guard were provide

to them by the said agency, in pursuance to the contract for supply of security guards. It is also case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis';and accordingly, the opposite Party No. 01 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency *i.e.* M/s Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:

(i) copy of Job contract/Agreement dated 30.03.1999, 01.10.1995 and 27.091990.

(ii) Copy of letter regarding termination of contract *w.e.f.*30.06.2000.

(iii) Copy of M/s Industrial Security Services letter regarding payment of salary.

(iv) Copies of letter issued by M/s/ Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy to bank payment vouchur as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 36/2002 between M/s Hindustan Cables Ltd. & M/s. Industrial Security Services *vs* Ram Avadh Yadav.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. And M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. That there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention,the management of M/s HCL has filed photocopies of registration certificate under contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mention the name of M/s. Industrial Security Services Allahabad for providing 'security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990, 30.06.2000. However,there is no whisper of existence of any contract between M/s. HCL and M/s. Industiral Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite party No. 01 and opposite party No. 02; rather he has pleaded that he was appointed by the opposite party No. 01 and was an employee of the opposite party No. 01. On the contrary the management of M/s HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s Industrial Security Services has no existence.

17. In view of the discussion made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cables Ltd. Regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s. Hindustan Cables Ltd. And M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman *w.e.f.* 22.01.2000 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai Hon'ble apex court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25 F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25F of

the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25 F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25 F of the Act, it is necessary for the claimant to lead evidence to the effect that the was actually in employment of the opposite part yfor 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and to with the HCL. Likewise, the photocopy of EPF deduction and Wages slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Security Services as security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s Industrial Security Services regarding posting /transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF callan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 36/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *vs.* Ram Avadh Yadav goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s Industrial Security Service and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdication of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding this alleged termination. In (2002) 3 SCC 25 Range Forest Officer *vs*. S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground along, the award is liable to be set aside".

20. Analyzing its earlier decisions on the aforesaid point Hon'ble apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman steping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter or discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls

per se without any plea of suppression by the claimant workman will not be the ground of the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents i.e. EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that the workman was an employee of the opposite party No. 02 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked of 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Ram Avadh Yadav was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employees and employer between him and the opposite party No. 1 *viz.* M/s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and employee of the contractor *viz.* M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd. The reference under adjudication is answered accordingly.

23. Award as above.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 758.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजर (ह र डी), हिन्दुस्तान केबल्स लिमिटेड एंड ऑथर्स, अल्लाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 49/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-42012/35/2009-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 758.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 49/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure, in the Industiral Dispute between the employers in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/35/2009-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:**

Dr. Manju Nigam, Presiding Officer

**I.D.No 49/2009**

Ref. No. L-42012/35/2009-IR(DU) dated: 09.10.2009

**BETWEEN:**

Shri Radhey Shyam S/o Shri Ram Naresh Singh
724-C, Dariabad
Allahabad

AND

1. The Manager
HRD, Hindustan Cables Limited, Naini
Allahabad

2. The Manager
M/s Industrial Security Services
4. Stratchy Road
Allahabad

**AWARD**

1. By order No. L-42012/35/2009-IR(DU) dated: 09.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Radhey Shyam, S/o Shri Ram Naresh Singh, 724-C, Dariabad, Allahabad and the Manager, HRD Hindustan Cables Limited, Naini, Allahabad & the Manager, M/s Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the Management of M/s Hindustan Cables Ltd. Allahabad, and the contractor, M/s Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to Employment of Shri Radhey Shyam is Sham and Bogus? If yes, whether the action of the management in terminating his services *w.e.f.* 26/10/1999 is legal and justified? If not, what relief the workman is entitled to?"

3. The case of workman, Radhey Shyam, in brief, is that he was appointed as a security guard with the opposite party on 29.02. 1996 and worked continuously, with some artificial break, till 25.10.1999; and he was restrained from working by the Security Officer of the management *w.e.f.* 25.10.1999. The workman has submitted that he was working with the opposite party as Security Guard which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite party No. 01 *viz.* M/s. Hindustan Cables Ltd.; and accordingly, there was relationship of employee and employer between him and the opposite party No. 01. It is further been submitted by the workman that he was paid through its illegal agent *i.e.* opposite party No. 02 *viz*. M/s Industrial Security Services and inspite of the fact that the worked for more than 240 days in each calendar year, the management of the opposite party No. 01 terminated his services without following the provisions of Section 25 F of the I.D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s Hindustan Cables Limited, Allahabad.

4. The opposite party No. 01 has dispute the claim of the workman by filling it written statement; whereas the opposite party No. 02 *viz*. M/s Industrial Security Services did not turn up inspite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act 1970; and the opposite party No. 02 is its contractor under the Contract Labour (Regulation and Abolition) Act, 1970 having license under the Act. The opposite party No. 01 has specifically submitted that it has neither engaged the workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I.D. Act. It is submitted by the opposite party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite party No. 02 *viz.* M/s Industrial Security Services was assigned job contracts dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite party No. 01 that it had never paid any wages to the workman; rather as per terms of contract, M/s Industrial Security Services used to submit its bill for payment and the opposite party No. 01 used to make payment to the opposite party No. 02 and thereafter, the workman was being paid by the opposite party No. 02; likewise, the opposite No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite party No. 01 and the workman. It has also been submitted by the opposite party No. 1 that the contract between opposite party No. 1 and opposite party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 01 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he had introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S.N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authoriszed representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite party No. 01 on 29.02.1996 as Security Guard and worked as such till 25.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reasons in contravention to the provisions of Section 25F of the I.D. Act, 1947.

10. In rebuttal, the opposite party No. 01's representative has contended that the worokman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my throughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s Hindustan Cables Ltd. on 29.02.1996 after interview and the duties performed by him were regular nature and contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL. He has stated that paper No. 16/97 16/98 is pay slip or PF statement of HCL, which he never received. He has also stated that he filed case before Industrial Tribunal also; wherein he filed written statement.

13. The management witness, Shri Sanjeev Ratan, Vice-President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S.N. Lakhorkar stated that opposite party No. 1 given the security work contract to M/s Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was temporary guards of M/s Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In cross-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Guard and worked continuously with some artificial breaks for more than 240 days in each calender year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of following documents.

(i) Judgment dated 12.01.2009 of Hon'ble High Court Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal, allahabad.

(iii) Pass Book of EPF.

(iv) Payment Slip

15. Per contra, the opposite party No. 02 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite party No. 01 has come with case that the workman concerned is not their employee; rather he is an employee of the opposite party No. 2 *i.e.* M/s Industrial Security Service whose services as Security Guard were provide to them by the said agency in pursuance to the contract for supply of security guards. It is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite party No. 01 entered into a contract with M/s Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.06.2000. The opposite party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman nor terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was supervised by the agency and was paid by the agency,

his PF and ESI supscription as deducted and deposited by the agency and his services were regulated by the contracting agency i.e. M/s Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:—

(i) Copy of Job Contract/Agreement dated 30.03.1990, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract *w.e.f.* 30.06.2000.

(iii) Copy of M/s Industrial Security Services letter regarding payment of salary.

(iv) Copy of letters issued by M/s Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy of bank payment voucher as service charge of M/s Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI Challan etc.

(vii) Copy of written statement in adjudication case No. 32/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services Vs Radhey Shyam Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention, the management of M/s HCL has filed photocopies of registration certificates under Contract Labour (Regulation & Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner, Uttar Pradesh clearly mentions the name of M/s. Industrial Security Services, Allahabad for providing 'Security work' through 41 workmen; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreeement it is apparent that the said contract for supply of security guards came into effect from 1.5.1990 to 30.6.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s. Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 01 and opposite Party No. 02; rather he has pleaded that he was appointed by the opposite Party No. 1 and was an employee of the opposite Party No. 01. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore he may be treated as employee of the principle employer i.e. M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

17. In view of the discussions made hereinabove, absence of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s Hindustan Cables Ltd. regarding existence of contract between itself and M/s Industrial Security Services with supportive documentary evidence, I am of the opinion that the contract between M/s Hindustan Cables Ltd. and M/s Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman w.e.f 26.10.1999 the workman has pleaded that he has appointed by the HCL and worked for more than 240 days in each calender year and his services have been terminated by the HCL without complying with the provisions contained in Section 25F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145 (SC) Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai Hon'ble Apex court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

"The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary of wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25 F of the Act, it is necessary for the claimant to least evidence to the effect that he was actually in employment of the opposite party

for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the management of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has ulterly failed to substantiate this fact that he worked for 240 days in a year preceding the termination.

On the Contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and he was deployed by M/s. Industrial Services as security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 32/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services vs. Radhey Shyam goes to show that the workman himself has pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he has worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had infact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact worked for 240 days as order or record of appointment or engagement for that period was produced by the workman. On this ground along, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follows:

> "It is clear that the provisions of the evidence Act in terms to not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgements we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decision however make it clear that mere affidiavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgment further lay down that mere non production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination; but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e.* EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite Party No. 01.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendence details and the statement/ receipt of EPF and ESI contribution goes to show that that the workman was an employee of the opposite Party No. 02 i.e. M/s. Industrial Security Services and he had been deployed by the opposite Party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order to termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussion, made herein above I am of considered opinion that the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Radhey Shyam was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite Party No. 1 viz. M/s. Hindustan Cables Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor viz. M/s. Industrial Security Services, therefore the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd., The reference under adjudication in answered accordingly.

23. Award as above.

LUCKNOW
25th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 759.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार मेनेजर (एच आर डी), हिंदुस्तान केबल्स लिमिटेड एंड ऑदर्स, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 50/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/34/2009-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 759.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 50/2009) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager (HRD), Hindustan Cables Limited and Others, Allahabad and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42012/34/2009-IR(DU)]
P. K. VENUGOPAL Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT :** Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 50/2009**

Ref. No. L-42012/34/2009-IR(DU) dated 09.10.2009

**BETWEEN:**
Shri Sudarshan Singh
Irrigation Workshop Colony, Karchana
Allahabad.

AND

1. The Manager
HRD, Hindustan Cables Limited, Naini
Allahabad.

2. The Manager
M/s. Industrial Security Services
4, Stratchy Road
Allahabad.

**AWARD**

1. By Order No. L-42012/34/2009-IR(DU) dated: 09.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industril Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Sudarshan Singh, Irrigation Workshop Colony, Karchana, Allahabad and the Manager, HRD Hindustan Cables, Limited, Naini, Allahabad and the Manager, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad for adjudication.

2. The reference under adjudication is:

"Whether the contract between the management of M/s. Hindustan Cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Sudarshan Singh is sham and bogus? If yes,

whether the action of the management in terminating his services *w.e.f.* 26/10/1999 is legal and justified? If not, what relief the workman is entitled to"?

3. The case of the workman, Sudarshan Singh, in brief, is that he was appointed as a security guard with the opposite Party on 02.02.1996 and worked continously, with some articial break, till 25.10.1999; and he was restrained from working by the Security Officer of the management *w.e.f.* 26.10.1999. The workman has submitted that he was working with the opposite Party as Security Guard which is not seasonal, but perennial nature of work; and his work was being controlled and supervised by the officers of the opposite Party No. 01 *viz*. M/s Hindustan Cables Ltd., and accordingly, there was relationship of employees and employer between him and the opposite Party No. 01. It is further been submitted by the workman that he was paid through its illegal agent i.e. opposite Party No. 02 *viz.* M/s. Industrial Security Services and in spite of the fact that he worked for more than 240 days in each calendar year, the management of the opposite Party No. 01 terminated his services without following the prvosions of Section 25F of the I.D. Act, 1947; and accordingly it has been prayed by the workman that reinstated with full back wages and his services be regularized in the M/s. Hindustan Cables Limited, Allahabad.

4. The opposite Party No. 01 has dispute the claim of the workman by filing it written statement; whereas the opposite Party No. 02 viz. M/s. Industrial Security Services did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "left".

5. The management of M/s. Hindustan Cables Ltd. in its written statement has denied the claim of the workman with submission that it is principle employer, which is duly registered under the Contract Labour (Regulation and abolition) Act, 1970; and the opposite Party No 02 is its contractor under the Contract Labour (Regulation and abolition) Act, 1970 having license under the Act. The opposite Party No. 1 has specifically submitted that it has neither engaged he workman nor retrenched his services at any point of time, therefore, there arises no question of violating the provisions of Section 25 F of the I.D. Act. It is submitted by the opposite Party No. 1 that there has never been any sanctioned post of Security Guards in the M/s. Hindustan Cables Ltd. and the security services were always arranged on contract basis; accordingly the opposite Party No. 02 viz. M/s. Industrial Security Services was assigned job contracts dated 27.09.1990, 01.10.1995 and 30.03.1999. It has been stated by the opposite Party No. 01 that it had never paid any wages to the workman; rather as per terms of contract, M/s. Industrial Security Services used to submit its bill for payment and the opposite Party No. 01 used to make payment to the opposite Party No. 02 and thereafter, the workman was being paid by the opposite Party No. 02; likewise, the opposite Party No. 2 used to deduct the Provident Fund and ESI contribution in respect of workman and deposit the same with the concerned authorities; hence, there was no employer and employee relationship between the opposite Party No. 01 and the workman. It has also been submitted by the opposite Party No. 1 that the contract between opposite Party No. 1 and opposite Party No. 2 came to an end on 30th June, 2000 and accordingly, the security personnel deployed by M/s. Industrial Security Services were withdrawn by them on 30.06.2000 itself; and this does not amount to termination of services or termination in violation to the provisions of I.D. Act, 1947. Accordingly, the opposite Party No. 1 has prayed that the claim of the workman be rejected without any relief to him being devoid of merit.

6. The workman has filed its rejoinder wherein he has introduced nothing new apart from reiterating the averments already made in the statement of claim.

7. The parties have filed photocopy of documents in support of their cases. The workman examined himself; whereas the management examined Shri Sanjeev Ratan, Vice President of the Workers' Union and Shri S.N. Lakhorkar, Dy. Manager (Personnel & Relation) in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was appointed by the opposite Party No. 01 on 02.02.1996 as Security Guard and worked as such till 25.10.1999 with some artificial breaks and during his tenure he worked for more than 240 days in each calendar year, even then he has been removed from duty without any rhyme or reason in contravention to the provisions of Section 25 F of th I.D. Act, 1947.

10. In rebuttal, the opposite Party No. 01's representative has contended that the workman is contractor's employee as the opposite Party has undergone a contract with the M/s. Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guard supplied by M/s. Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite Party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s. Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947.

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman in his statement on oath has stated that he had been appointed in the M/s. Hindustan Cables Ltd. On 02.02.1996 after interview and the duties performed by him were regular nature and no contract for such work could be given to any contractor and also the contractor has not obtained any license in this regard from the labour department. In cross-examination he has stated that he did not receive any appointment letter from HCL; however he received salary Rs. 1700. He has stated that paper No. 9/1 to 9/13 bears his signatures and in the said slip ISS and HCL is mentioned. He also stated that paper No. 9/16 is photo copy of EPF pass book, which bears stamp and signatures of officer of ISS, issuing the same. He has also stated that he filed case before Industrial Tribunal also; wherein he filed written statement.

13. The management witness, Shri Sanjeev Ratan, Vice President of the union has stated that he maintains attendance and leave record of all the employees and officers working in the company and knows all the employees of the company. It was further stated that the workman was not an employee of the HCL; however the workman was security guard of the Industrial Security Services; and the Industrial Security Service used to arrange duty of their security guards, take their attendance and makes payment of salary etc. through their Security Officers. It was further stated that he never look after the attendance and leave of the Guards. It was stated in cross-examination that all the casual and temporary employees come through contractor and the workman under reference is employee of the contractor. The management witness, S.N. Lakhorkar stated that opposite Party No. 1 given the security work contract to M/s. Industrial Security Services which was from 01.05.1990 to 30.06.2000 and the security work was always carried out on contract basis as there was no sanctioned post of Security Guard. The HCL has been registered on 12.08.1988 under Contract Labour (Regulation & Abolition) Act, 1970. He has also stated that the workman was temporary guards of M/s. Industrial Security Services and the HCL never entered into any contract with respect to the services of the workman. He further stated that there is recruitment policy in HCL and recruitment is made as per prescribed procedure in the recruitment policy. He stated that the workman was employed by the M/s. Industrial Security Services and the workman was never got any payment by the HCL; rather the payment was made through the Contractor; likewise his contribution towards Provident Fund and ESI is being deducted by the Contractor. In corss-examination it was admitted that there is no sanctioned post of Security Guard in the HCL and security work is being done by the agencies and the work of guards were supervised by the Security Officers of the Industrial Security Services. It is stated by management witness that the HCL neither appoints any one nor removes any one, the workman was employee of the M/s. Industrial Security Services and he was appointed/removed by them.

14. The workman has come up with a case that he has been appointed by the management of the HCL on the post of Security Gaurd and worked continuously with some artificial breaks for more than 240 days in each calendar year; and his services have been terminated by the management without following the mandatory provisions of the Industrial Disputes Act, 1947. In the support of his pleading he has filed photocopy of following documents:

(i) Judgment dated 12.01.2009 of Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 29283/ 200.

(ii) Award dated 21.12.2006 of Industrial Tribunal Allahabad

(iii) Pass Book of EPF.

(iv) Payment Slip.

15. Per contra, the opposite Party No. 02 has not turned up to contest the case since the very inception of the proceedings before this Tribunal; whereas the opposite Party No. 01 has come with case that the workman concerned is not their employee, rather he is an employee of the opposite Party No. 2 i.e. M/s. Industrial Security Services whose services as Security Guard were provide to them by the said agency, in pursuance to the contract for supply of security guards. It is also the case of the management that there is no sanctioned post of Security Guard in their establishment and the security work is being done through agencies on contractual basis; and accordingly, the opposite Party No. 01 entered into a contract with M/s. Industrial Security Services to provide Security Guards *w.e.f.* 01.05.1990 to 30.06.2000. The opposite Party has pleaded that it neither appointed the workman nor supervise his duties, nor made any payment to the workman not terminated his services at any point of time. Moreover, it is also contended that the workman was an employee of the contracting agency, his work was suppervised by the agency and was paid by the agency, his PF and ESI subscription as deducted and deposited by the agency and his services were regulated by the contracting agency i.e. M/s. Industrial Security Services. In this regard the management has come forward with photo copy of various documents including following:

(i) Copy of Job Contract/Agreement dated 30.03.1999, 01.10.1995 and 27.09.1990.

(ii) Copy of letter regarding termination of contract *w.e.f.* 30.06.2000.

(iii) Copy of M/s. Industrial Security Services letter regarding payment of salary.

(iv) Copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc.

(v) Copy to bank payment voucher as service charge of M/s. Industrial Security Services for October, 1999 with details of attendance and payment to the contracting agency.

(vi) Copy of EPF challan and ESI challan etc.

(vii) Copy of written statement in adjudication case No. 31/2002 between M/s. Hindustan Cables Ltd. & M/s. Industrial Security Services *Vs*. Sudarshan Singh.

16. The terms of reference requires to adjudicate the validity of contract between the management of M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services with regard to the employment of the workman. In this regard there is very specific pleading from the management of M/s. Hindustan Cables Ltd. that there is no sanctioned post in their establishment and the security work is carried out by some agency on contract. In support of its contention, the management of M/s. HCL has filed photocopies of registration certificate under Contract Labour (Regulation and Abolition) Act, 1970 and photocopies of contract/agreement dated 30.03.1999, 01.10.1995 and 27.09.1990. The registration certificate dated 12.08.88 issued by Dy. Labour Commissioner. Uttar Pradesh clearly mention the name of M/s. Industrial Security Services, Allahabad for providing 'security work' through 41 workman; and the terms to agreement between M/s. HCL and M/s. Industrial Security Services shows that M/s. Industrial Security Services/contractor was required to supply security guards. From perusal of the contract agreements it is apparent that the said contract for supply of security guards came into effect from 01.05.1990 to 30.06.2000. However, there is no whisper of existence of any contract between M/s. HCL and M/s Industrial Security Services for supply of security guard in the statement of claim filed by the workman before this Tribunal. Likewise the workman has not challenge the validity of the contract entered between the opposite Party No. 01 and opposite Party No. 02; rather he has pleaded that he was appointed by the opposite Party No. 1 and was an employee of the opposite party No. 01. On the contrary the management of M/s. HCL has pleaded that it was in an agreement with the M/s. Industrial Security Services for supply of security guards and the workman was one of them. The workman in his evidence also has not come forward with the evidence that the contract between the opposite parties was sham and bogus, therefore, he may be treated as employee of the principle employer *i.e.* M/s. Hindustan Cable Ltd. On the contrary he has come up with the evidence that he was employee of the HCL and M/s. Industrial Security Services has no existence.

17. In view of the discussions made hereinabove, absance of any pleading and evidence on behalf of the workman regarding validity of the contract and submissions of the management of M/s. Hindustan Cable Ltd. regarding existence of contract between itself and M/s. Industrial Security Services with supportive documentary evidence. I am of the opinion that the contract between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services for supply of security guards was neither sham nor bogus.

18. As regard second part of the reference regarding validity of termination of the services of the workman *w.e.f.* 26.10.1999 the workman has pleaded that he has been appointed by the HCL and worked for more than 240 days in each calendar year and his services have been terminated by the HCL without complying with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. In 2005 (107) FLR 1145(SC) Surenderanagar Panchayat and another *Vs*. Jethabhai Pitamberbhai Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

> "The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is not well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

Therefore, in view of the above referred case law, in order to take any relief for non-compliance of mandatory provisions contained in section 25-F of the Act, it is necesary for the claimant to lead evidence to the effect that he was actually in employment of the opposite party for 240 days in the year preceding his termination and he was actually paid for it. In the instant case there is no iota of evidence to show that the workmen worked for 240 days with the managment of the HCL in twelve calendar months preceding the date of termination. The photocopy of the documents filed by the workman do not support the statement of the workman as the photocopy of EPF pass book bears 'Name of Office to ISS (Industrial Security Services), HCL, Naini, Allahabad, goes to show that the workman was on the rolls of M/s. Industrial Security Services and not with the HCL. Likewise, the photocopy of EPF deduction and Wages Slip do not indicate that the same were issued by the HCL and the workman was their employee. The workman has utterly failed to substantiate

this fact that he worked for 240 days in a year preceding the termination.

On the contrary the management of the HCL has come out with ample documentary evidence to show that the workman was an employee of the M/s. Industrial Security Services and the was deployed by M/s. Industrial Security Services as Security Guard in the HCL, this includes copy of agreement, copies of letters issued by M/s. Industrial Security Services regarding posting/transfer of Security Guards/Security Officers etc., copy to bank payment voucher as service charge of M/s. Industrial Security Services with details of attendance and payment to the contracting agency, copy of EPF challan and ESI challan etc. Apart from this the copy of written statement in adjudication case No. 31/2002 between M/s. Hindustan Cables Ltd. and M/s. Industrial Security Services *Vs.* Sudarshan Singh goes to show that the workman himself had pleaded before Industrial Tribunal that he was appointed on temporary basis in M/s. Industrial Security Services and deduction towards EPF and ESI is being made by M/s. Industrial Security Services and being deposited in the Government account by M/s. Industrial Security Services.

19. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for 240 days in the year concerned. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that she had in fact worked up to 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer *Vs.* S.T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

20. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti and Asstt. Executive Engineer as follow:

> "It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgements we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing congent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has stated that he has worked continuously for 240 days, but has not produced any document neither original nor photocopy in support of his oral evidence. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination, but he failed to do so as he has he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Moreover, the photocopy of documents *i.e.* EPF pass book goes contrary to his stand. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite Party No. 01.

21. On the other hand the management has well proved its case by filing copy of the contract with the M/s. Industrial Security Services the security guards were required to be paid through the contractor. Also, the payment statement, attendance details and the statement/ receipts of EPF and ESI contribution goes to show that the

workman was an employee of the opposite Party No. 02 *i.e.* M/s. Industrial Security Services and he had been deployed by the opposite Party No. 02 to carry out the work of security guard.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he was to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

22. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the contract between the management of M/s. Hindustan cables Ltd., Allahabad, and the contractor, M/s. Industrial Security Services, 4, Stratchy Road, Allahabad, with regard to employment of Shri Sudarshan Singh was neither sham nor bogus. The workman could not be able to prove to through cogent evidence that there was a relationship of employee and employer between him and the opposite Party No. 1 viz. M/s. Hindustan Cable Ltd.; rather from the evidence adduced it is established that he was and an employee of the contractor *viz*. M/s. Industrial Security Services, therefore, the workman could not be granted the relief of retrenchment compensation or any other relief sought by the workman against the M/s. Hindustan Cables Ltd. The reference under adjudication is answered accordingly.

23. Award as above.

Lucknow
25th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 760.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, भिवानी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, दिल्ली के पंचाट (संदर्भ संख्या 29/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/43/2007-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 760.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 59/2007) of the Central Covernment Industrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Ltd., Bhiwani and their workman, which was received by the Central Government on 03/02/2014.

[File No. L-40012/43/2007-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI**

**PRESENT:** Shri Harbansh Kumar Saxena

ID No. 59/2007

Sh. Vinod Kumar

*Versus*

Bharat Sanchar Nigam Ltd., Bhiwani

**AWARD**

The Central Government in the Ministry of Labour *vide* notification No. [L-40012/43/2007-IR(DU)] dated 9.10.2007 referred the following industrial Dispute to this tribunal for the adjudication:—

> "Whether the action of the management of BSNL, Bhiwani in terminating the services of their workman Shri Vinod Kumar, *w.e.f.* 28.03.2006 is legal and justified? If not, to what relief the workman is entitled to?"

On 19.10.07 reference was received in this tribunal. Which was register as I.D. No. 59/2007 and claimant was called upon to file claim statement with fifteen days from date of serviece of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:—

1. That Pettitioner/workman was engaged/appointed as Driver *w.e.f.* 07/03/2000 (Log book) by the respondent/ Management and was posted as such as at Bhiwani. The Petitioner was working as Driver on Jeep No. HR-16B/5051 which is the ownership of respondent No. -1. The Petitioner was drawing a salary of Rs. 2500/- P.M. and it was revised to Rs. 3000.-*w.e.f.* 2004. The work & conduct of the Petitioner-workman remained satisfactory during his long service tenure.

2. That the post on which the Petitioner was working was and is of permanent nature, but the respondent termed the same as daily wages.

3. That on 28.03.2006, when the Petitioner-workman reported for duty as usual, he was not allowed to do his work rather he was told that his services are no longer required and in this way his services stand terminated since then.

4. That the Petitioner has worked continuously from 07.03.2000 to 27.03.2006 (Log book) with utmost sincerity and probity and to the entire satisfaction of his superiors.

5. That the terminating of services of the Petitioner in such a unilateral manner is quite illegal, unjustified, capricious, viod-ab-initio, being not in accordance with the provisions of the Chapter-V of Industrial Dispute Act, 1947 and principle of natural justice.

6. That this type of oral terminations amount to retrenchment, but no notice or any retrenchment compensation was paid or offered to the Pettitioner at the time of his termination, so the respondent have violated the provisions of 25(F) & (G) of the ID Act, 1947.

7. That at the time of termination/retrenchment of services of the Petitioner about more than 200 workers were working with BSNL, but the respondent have neither issued any notice assigning reasons and cause of retrenchment nor sought any permission from the appropriate Government. In this way, the respondent have violated the mandatory provisons of Section 25N of the Industrial Dispute Act, 1947.

8. That the respondents has appointed fresh hands after termination/retrenchment of the Petitioner, but no opportunity of employment have been afforded to the Petitioner. In this way, the respondents have violated the provisions of the Industrial Disputes Act, 1947.

9. That the Petitioner have been made a victim by the respondent only to adjust their own person in place of Petitioner.

10. That the respondent/management has adopted the policy of hire and fire at their sweet will on one hand and they indulged in Unfair Labour Practice on the other hand by appointing the young poor persons as daily wages Workers on perennial nature of work.

11. That Telephone Department carries on systematic activities which are organized by co-operation between the employee and employer and services are rendered to satisfy the human wants and wishes, hence the Telephone Department falls under the definition of industry as per Section 2(j) of the Industrial Dispute Act, 1947. The Petitioner was engaged as Driver and used to do the manual work for hire and reward. There exists relationship of employer and employee between the Petitioner and the Department; hence Petitioner is a workman as per the definition of workman as per Section 2(S) of the Industrial Disputes Act, 1947.

12. That after termination of service, the Petitioner has visited numbers of the times to the office of respondent for getting his services reinstated, but of no use except false assurances.

13. That the Petitioner is a poor young man and forced unemployed since the date of his termination/ retrenchment, however, the Petitioner made many efforts to get job but succeed so far.

14. That the Petitioner has requested many a times to the respondents for taking back him on duty with full back wages and continuity of service along with all other attending benefits, but the respondents refused to do the same, so a demand Notice dated 10.05.2006 was sent to the respondent by Registered Post for reinstated of the Petitioner, but the respondent by Registered post for reinstated of the Petitioner, but the respondents did not reply the same, which shows their refusal to admit the claim of the Pettitioner. Photocopies of Demand Notice and Postal Receipts are attached herewith for kind persual.

15. That refusal of the respondent to admit the claim of the Petitioner. The Petitioner filed an Industrial Dispute regarding his illegal terminating before the Assistant Labour Commissioner Central, Faridabad. The Assistant Labour Commissioner called both the parties for conciliation proceeding. And the same were failed and as such failure report was submitted by A.L.C. Faridabad. To the (Regional Labour) Commissioner, New Delhi for making reference of the dispute before this Hon'ble Court for adjudication. So the case has been referred to this Hon'ble Court by the regional Labour Commissioner (Central). The letter Dt. 9.10.2007 No. L-40012/43/2007-IR(DU) recd. On 18.10.07 Govt. of India/Bharat Sarkar/Ministry of Labour is attached.

It is therefore prayed that the claimed statement may kindly be accepted with cost at the petition and the petitioner workman may kindly be ordered to be reinstated with full back wages and continuity of service along with attending benefit including litigation expenses.

MANAGEMENT FILED WRITTEN STATEMENT AGAINST CLAIM STATEMENT WHEREIN UNDERHEAD PARAWISE REPLY TO THE GROUNDS.

**PRELIMINARY OBJECTIONS:**

(A) That without going into the question that alleged workman Shri Vinod Kumar was ever appointed/engaged and retrenched from service as alleged, the opinion to the effect that an Industrial Dispute exists in this matter is baseless, and hence the Reference is void.

(B) That the alleged workman Shri Vinod Kumar had never been an employee of the opposite party/respondent as alleged, and there existed no employer and employee relationship between them. Without ascertaining the relationship, no question of his alleged termination arises and therefore the Reference is bad in law.

In view of the preliminary objections raised herein before, it is submitted that the present order of reference is void and illegal and is not maintainable and this Hon'ble

Tribunal has no jurisdiction to try and decide the same on merits. However, in the light of above averments/ objections, the written statement of the respondent is submitted on merits as under:

**ON MERIT:**

1. That the contents of para 1 of the Claim Statement are misconceived, false and baseless, hence denied. The petitioner was never appointed/engaged as Driver by the answering respondents. Lok-books does not itself constitute a proof of his appointment. The petitioner is put to strict proof of his appointment and of his receiving salary as alleged.

2. That the contents of para 2 of the Claim Statement are false and misconceived, hence not admitted subject to Additional Pleas.

3. That the contents of para 3 of the Claim Statement are false and frivolous, hence not admitted. The petitioner is put to strict proof of the contents made therein.

4. That the contents of para 4 of the Claim Statement are false, frivolous and misconceived, hence not admitted. The petitioner had not been in continuous service of the respondents within the meaning of section 25-B of the Industrial Disputes Act, 1947.

5. That the contents of para 5 of the Claim Statement are false and frivolous, hence deined and is subject to Additional Pleas.

6. That the contents of para 6 of the Claim Statement are baseless, hence not admitted. In view of facts as stated in the Additional Pleas, the provisions of section 25-F and 25-G of Industrial Disputes Act, 1947 do not apply in the present circumstances.

7. That the contents of para 7 of the Claim Statement are misconceived, false and frivolous, hence not admitted. In view of the fact that there is no relationship of employer and employee between the respondents and the petitioner, and the fact that the petitioner was not employed in continuous service within the meaning of section 25-B of the Industrial Disputes Act, 1947, the provisons of section 25-N of Industrial Disputes Act, 1947 are not attracted in the present circumstances.

8. That the contents of para 8 of the Claim Statement are false and baseless, hence denied. No fresh hands have been employed by the respondents as alleged. The petitioner is put to strict proof of the same.

9. That the contents of para 9 of the Claim Statement are false and baseless and is therefore not admitted. The petitioner is put to strict proof of the contents made therein.

10. That the contents of para 10 of the Claim Statement are vegue, baseless and devoid of any reason, hence emphatically denied. The petitioner is put to strict proof of the contents made therein.

11. That the contents of para 11 of the Claim Statement are misconceived, false and fictitious and are not admitted in view of additional pleas.

12. That the contents of para 12 of the Claim Statement are absolutely wrong, hence denied. The petitioner never made any representation regarding his reinstatement to the respondents. The petitioner is put to strict proof of the same.

13. That the contents para 13 of the Claim Statement are false and hence denied.

14. That the contents of para 14 of the Claim Statement are false and misconceived, hence not admitted. The Demand Notice dated 10.05.2006 was sent to give colour to the pleas of the petitioner to get service in the office of the respondents through back door, although the contents of the said Demand Notice are false and baseless, hence, it was not considered to be answered.

15. That the averments of para 15 of the Claim Statement are matters of record and require no comment.

That the petitioner is not entitled to any relief and the Claim Statement is liable to be dismissed with costs.

**ADDITIONAL PLEAS**

16. That the Claim Statement is vague, baseless, improper, devoid of merit and not tenable in the eye of law and facts and thus is liable to be dismissed with costs.

17. That the Claim Statement is neither factually, nor legally maintainable against the answering respondents.

18. That the petitioner has never been appointed/ engaged as an employee of the respondents and there was no master and servant relationship between them. The petitioner was never posted in the office of the respondents as Driver during the period alleged nor he drew monthly salary. The petitioner did not even worked as daily wage worker for the period as alleged. The petitioner was not a workman of the respondents within the meaning of section 2(s) of the Industrial Disputes Act, 1947 for his entitlement for the relief claimed and therefore the petitioner lacks locus-standi, as such the Claim Statement is liable to be dismissed with costs.

19. That since the petitioner had never been a workman in continuous service of the answering respondents and no relationship of master and servant existed between the respondent and the petitioner, no question of the improper termination/retrenchment of the petitioner arises. The petitioner cannot take the benefit of section 25-F of the Industrial Disputes Act, 1947. The person who claims the benefit of section 25-F of the said Act must be one validly appointed in the service of the employer. In the present circumstances, the provisions of section 25-F were not requried to be complied with.

20. That the petitioner had casually worked as a daily wager on the contingency of work on different days for which he was paid daily. His engagement began on every working day and came to end on every ending of a working day that is why he got only payment for his working days. The petitioner has never been employed in continuous service within the meaning of section 25-B of the Industrial Disputes Act, 1947.

21. That the post of a Driver can be filled by regular appoinment after following the prescribed procedure only. The petitioner somehow laid hands on the log-book and thereafter fraudulently planned the stroy of his retrenchment.

22. The alternatively, the nature of the alleged work/ funciton of the petition does not even for the slightest stretch of imagination contribute towards any industrial manaul work.

23. That the respondents No. 1 the Sub Divisional Engineer (P), No. 2 the Divisional Engineer (Telecom) and No. 3 the Divisional General Manager posted at Bhiwani do not form an 'Industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947. Respondents No. 1 and 2 are themselves employees of Bharat Sanchar Nigam Ltd. and respondent No. 3 is on deputation working with B.S.N.L. whereas the B.S.N.L. has not been impleaded as a party. The Claim Statement is therefore misconceived and deserves to be dismissed on this score only.

24. That Bharat Sanchar Nigam Ltd. helps connect through telephonic links without indulging itself in commercial activity. B.S.N.L. therefore does not fall within the purview of 'Industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947.

25. That Bharat Sanchar Nigam Ltd. came into existence on 1.10.2000 from erstwhile Department of Telecom under Ministry of Telecommunication. The alleged appointments of the petitioner on 7.3.2000 by the respondent/management is not, therefore possible.

26. That the petitioner has disclosed no cause of action against the answering respondents and as such the Claim Statement against the answering respondents is not maintainable legally.

27. That the answering respondents further reserve that right to file an amended or additional written statement at a later stage of the proceedings if some new fact/evidence is brought before the Tribunal.

28. That the Claim Statement is not properly verified/ attested in accordance of the Industrial Disputes (Central) Rules, 1957 and is therefore liable to be dismissed.

In view of the facts and circumstances given herein above, the petitioner is not entitled to any relief and the Claim Statement merits dismissal with costs.

**Workman filed rejoinder wherein he stated as follows:—**

**Replication to Preliminary Submissions:—**

(A) That para (A) of the written statement is absolutely wrong, denied and not admitted. The petition/ workman was engaged/appointed as Driver *w.e.f.* 07.03.2000 (log book) by the respondent/Management and was posted as such at Bhiwani. On 28.03.2006, petitioner was not allowed to do his work and was told that his services are no longer required. There is relation of Master and servant and Industrial Dispute exists between the parties to the petition and Reference is liable to be accepted, being the genuine one.

B) That para (B) of the written statement is absolutely wrong, denied and not admitted. Workman had been an employee of the respondents since 7.03.2000 till 28.03.2006 there exists employer and employees relationship between them.

The claim of the workman is correct, he same is genuine legal and according to law, same is liable to be accepted and this Hon'ble Tribunal has jurisdiction to try and decide the same on merits.

**Replication to on merits.**

1. That para No. 1 of the written statement is wrong, denied and not admitted. Nothing has been concealed in the Claim statement. The petitioner was appointed, as driver, Para No. 1 of the claim statement is correct and reiterated. It is pertinent to mention here that in case State *Vs*. Tarachand cr 1 case no. 118-1 of 2003 decided on2.8.2004, the workman was produced as witness by the department, being the driver of Jee No. HR 16B-5051 (copy of judgment is attached) further more in claim petition, decided on 16.05.2006 titled Prakash Devi *Vs*. Vinod Kumar (driver of Jeep No. HR 16B-5051) and others the workman was involved as driver of the Jeep No. HR 16B-5051), (Copy of claim petition is also attached herewith) further more several other cases, it is clearly proved that the workman was the driver of Jeep No. HR 16B-5051 ownership of respondent No. 1 Sufficient proofs are in possession of workman, same would be submitted as and when ordered.

2. That para No. 2 of the written statement is wrong, para No. 2 of the claim statement is correct and reiterated.

3. That para No. 3 of the written statement is wrong, para No. 3 of claim statement is correct and reiterated. Sufficient proof is attached, as detailed in para No. 1.

4. That para No. 4 of the written statement is wrong, para No. 4 of claim statement is correct and reiterated. The workman remained in continuous service from 7.3.2000 to 27.3.2006 (copy of log book is attached.)

5. That para No. 5 of the written statement is wrong, para No. 5 of the claim statement is correct and reiterated.

6. That para No. 6 of the written statement is wrong, para No. 6 of the claim statement is correct and reiterated. Provisions of section 25-F and 25-G of I.D. Act, 1947 is fully applicable in the present matter.

7. That para No. 7 of the written statement is wrong, para No. 7 of the claim statement is correct and reiterated. All the provisions of I.D. Act, 1947 are applicable in the present case.

8. That para No. 8 of the written statement is wrong, para No. 8 of the claim statement is correct and reiterated. Fresh hands have been appointed by the respondents.

9. That para No. 9 of the written statement is wrong, para No. 9 of the claim statement is correct and reiterated.

10. That para No. 10 of the written statement is wrong, para No. 10 of the claim statement is correct and reiterated.

11. That para No. 11 of the written statement is wrong, para No. 11 of the claim statement is correct and reiterated. Aditional pleas are totally false.

12. That para No. 12 of the written statement is wrong, para No. 12 of the claim statement is correct and reiterated. So many representations were made by the workman.

13. That para No. 13 of the written statement is wrong, para No. 13 of the claim statement is correct and reiterated.

14. That para No. 14 of the written statement is wrong, para No. 14 of claim statement is correct and reiterated. Demand notice has been sent under due law procedure and all the contents of demand notice are correct.

15. That para No. 15 of the written statement needs no reply.

**Reply to Additional pleases**

16. That para No. 16 of the written statement is absolutely wrong, hence denied. The claim statement is correct, the same is tenable in the eye of law.

17. That para No. 17 of the written statement is wrong, the claim statement is genuine and the same is maintainable.

18. That para No. 18 of the written statement is absolutely wrong, workman was appointed as driver and he remained in service as detailed in the claim statement. In proof copies of two judgements, are attached herewith. Totally false and version has been given by the respondents.

19. That para No. 19 of the written statement is also absolutely wrong, workman remained continue in service till 27.03.2006 (copy of log book is attached).

20. That para No. 20 of the written statement is wrong, the workman remained employee in continuous service.

21. That para No. 21 of the written statement is the effort to keep the Hon'ble Court in dark, there is no truth.

22. That para No. 22 of the written statement is wrong, petitioner is legally entitled to the relief as prayed for.

23. That in reply of para No. 23 of the written statement it is stated that the matter is between the master and servant. Nothing has ben concealed in the claim statement.

24. That para No. 24 of the written statement is wrong, the matter is between employee and employer the same falls within the purview of 'Industry'.

25. That para No. 25 of the written statement has been written only to create some wrongful evidence in their favour by the respondents which has no base.

26. That para No. 26 of the written statement is wrong, cause of action has accrued to the workman on denial to discharge his duties with the directors that his services are not required further.

27. That para No. 27 of the written statement is wrong, it is the result of cunningness of the respondents, otherwise they have no right to file additional written statement.

28. That para No. 28 of the written statement is wrong, claim statement is properly verified accordingly.

It is, therefore, prayed that claim statement may kindly be accepted as prayed for.

**On basis of pleading of parties following issues has been framed by my Ld. Predecessor on 05.11.08:—**

(1)" Whether the petitioner was a workman of the management of BSNL Bhiwani and had been in continuous service from 07.03.2000 to 28/03/2006 of the respondents within the meaning of Section -25-B of the Industrial Disputes Act, 1947." OPW.

**Workman in support of his case filled affidavit in his evidence. wherein he stated as follows:—**

1. That the deponent was engaged/appointment as Driver with effect from 7.03.2000 by the respondent/ management and as such he was posted at Bhiwani. The deponent was working as driver on a Jeep bearing registration No.HR-16/B 5051 owned by the respondent No. 1. The deponent was drawing Rs. 2500 as salary per month initially which was subsequently revised to Rs. 3000 per month with effect from year 2004. The work and conduct of the respondent has remained highly satisfactory throughout his service tenure.

2. That the post on which the deponent was working was of permanent nature, but the respondents termed the deponent as daily wager.

3. That when the deponent reported for his duty as usual on 28.03.2006, he was not allowed by the respondent to resume his duty by saying verbally that the services of the deponent stands terminated since then. The deponent has thus worked continuously with the respondents/ management from 7.3.2000 to 27.03.2006 with utmost sincerely and probity and to the entire satisfaction of his superiors.

4. That termination of services of the deponent in such a unilateral manner is quite illegal, unjustified, capricious,viod-ab-initio, being not in accordance with the provisions of chapter-V of the Industrial Dispute Act, 1947 and the principles of natural justice.

5. That such type of oral termination of services of the deponent amounts to retrenchment without issuing any notice and making any retrenchment compensation. Termination of service of the deponent is in utter violation of provisions of sections 25(F) and 25(G) of Industrial Disputes Act, 1947.

6. That at the time of terminating the services of the petitioner/deponent, more then 200 workers were working with the respondents, but the respondents neither issued any notice assigning reason and cause of retrenchment nor sought any permission from the Appropriate Government. In this way, the respondents have voilated the mandatory provisions of section 25N of the Industrial Dispute Act.

7. That the respondents have appointed many fresh hands after terminating the services of the deponent, but no opportunity of employment has been afforded to the deponent. In this way, the respondents have violated the provisions of Industrial Dispute Act, 1947.

8. That the services of the deponent have been terminated by the respondents with a view to adjust their own near and dear in place of the deponent. The respondents have adopted the policy of 'hire and fire' at their sweet will no one hand and they are in indulged in unfair labour practice on the other hand by apponting as daily wager on perennial nature of work.

9. That respondent department caries on systematic activities which are organized by co-operation between the employee and employer and the services are rendered to satisfy the human wants and wishes, hence the respondent department falls under the definition of industry as per section 2(J) of Industrial Dispute Act, 1947. The Deponent was engaged as driver and he used to do the manual work of driver for hire and reward so there exists relationship between the deponent and respondents of employee and employer, hence the deponent is a workman as per definition of workman as provided under section 2(s) of the Industrial Disputes Act, 1947.

10. That the deponent visited the office of the respondents after his termination for re-instatement,but of no use as they only gave false assurance.

11. That the deponent was an employee/workman under the respondents/Deptt. in this proof deponent is hereby state on oath that during the service tenure of the deponent was falsely involved in Motor Accident case *vide* FIR No. 43 dt. 19.3.2005, P.S. Tosham, District Bhiwani for which deponent faced the trial and was acquitted the case/petition was decided by the then M.A.C.T. Bhiwani titled' State *Vs.* Vinod driver of Jeep No. HR 16B-5051 which is of the department. (copy of judgment is attached). Further more in connected FIR the deponent also faced Motor Accident Claim Tribunal case where the management *i.e.* SDE and others compromised the case by making compensation to the Claimant (copy of the petition is already on file) while now the Master/Department has denied the relation of Master and servant.

12. That the deponent remained in service 7.3.2000 till his termination.

13. That the deponent/master now denying the relationship between department and deponent knowingly only with ulterior motive while it is absolutely true fact that deponent is an employee/servant of the department all the concerned cases are on file.

14. That it is further pointed out that if workman has not worked with respondent then what was the necessity of bringing the deponent before the Court in the case mentioned above.

15. That the deponent is a young poor person and forced unemployed since the date of his termination and he has not succeeded in getting other employment so far. The deponent made many requests to the respondent to re-instate his services with back wages and all attending benefits, but there repondents did not pay any heed and in the compelling circumstances, the depoment challenged his termination by filling a demand notice dated 10.05.06 U/s 2-A of Industrial Disputes Act, 1947.

16. That in the circumstances of the case, the present reference is liable to be awarded in favour of the deponent and against the respondent as prayed for.

**Workman tendered his affidavit on 1.12.2010.**

**He was cross-examined on the same day.**

**His cross examination is as follows:—**

It is correct that no appointment letter was ever issued to me by the management whereby I was appointed. I have no filed any document showing my employment with the management. I got the driving license for the first time on 30.01.1995. There was the notice board displayed at the gate of the office of the management whereby they had requested for employing the drives. On reading that notice

I met Sub Divisional Engineer Sh. Jeet Ram who took my test and appointed me but did not give me any paper. I used to get my wages on vouchers in cash. Two other similarly placed labourers were also getting their wages in the same manner on vouchers. The wages used to be paid every month on monthly basis. I used to perform my duties for the whole of the month including Sundays and holidays and was paid accordingly. I did not use to do the job of cable repairing though I was doing other miscellaneous jobs as was required of me. My signatures used to be obtained on blank papers and I used to sign on the revenue stamps and thereafter I do not know what they filling in the said papers.

The log book of the vehicle used to remain with me with the vehicle. I did not use to deposit the log book in the office even when such log books used to be complete and fresh one's were put into use. The log book used to be filled and signed by the SDE and thereafter I also used to sign the log book. It is correct that my signature are not there on the log books. It is correct that there is no column for the driver to sign the log books.

Motor accident claim case titled as Parkashi Devi's *Vs.* Vinod Kumar whereby I was impleaded as driver of the vehicle was ultimately withdrawn by Parkashi Devi and court dismissed the said case as withdrawn. It is correct that I have been acquitted in case FIR No. 43 dated 19.3.2005, PS Tosham, Distt. Bhiwani, Haryana. It is correct that Parkashi Devi and Ved Parkash, eye witnesses in the said case did not identify me as accused-driver and I was acquitted. It is correct that I did not identify accused Tara Chand in another case, State *Vs.* Tara Chand, also of Bhiwani district. It is incorrect to suggest that I have deposed falsely or that I have no case against the management. It is incorrect to suggest that I did not remain in continuous service from 7.3.2000 to 27.3.2006. I earn about Rs. 3,000/- per month by working as labourers. It is incorrect to suggest that I am earning Rs. 6,000/- per month by working as driver.

**Management in support of its case filed affidavit of management witness Sh. Jeet Ram, Wherein he stated as follows:—**

1. That I, the deponent above names was working as Divisional Engineer, BSNL and having been posted at Bhiwani SSA is fully aware of the facts and circumstances of the case and is therefore competent to swear this affidavit and as such is fully acquainted with the facts deposed herein below.

2. That the deponent was posted as Divisional Engineer at Bhiwani (Rohtak SSA) from 20.1.2000 to 09.04.2003. The deponent retired on attaining the age of superannuation on 31.08.2008 from the post of Divisional Engineer, Karnal SSA.

3. That no notice was issued and hence not displayed at the Gate/Notice Board of the office of BSNL, Bhiwani for any requirement of Drivers during my tenure at Bhiwani. Neither any such Notice was published in any newspaper nor was any such requirement solicited by any advertisement.

4. That the workman Vinod Kumar S/o Chander Singh did not approach the deponent for recruitment as Driver. That the deponent neither took any driving test for recruitment of drivers nor the deponent took driving test of Vihod Kumar. The deponent did not appoint/engage Vinod Kumar as driver.

5. That the recruitment of drivers in BSNL is made in terms of the Recruitment Rules of Drivers as published by HRD Cell of BSNL dated 28.01.2002. Recruitment Rules of Driver in BSNL dated 28.01.2002 are filed as annexure and marked as Exhibit E-1.

6. That BSNL came into existence on 01.10.2000 from erstwhile Dot/DTS/DTO. On the date of the alleged appointment *i.e.* 7.03.2000, the recruitment rules of drivers as framed by the Ministry of Communication, Department of Telecommunications published in the Gazette of India dated 19.6.1999 *vide* G.S.R. No. 188 dt. 7th June 1999 were in force and any recruitment to the posts of Motor, Jeep, lorry and Staff Car drivers was to be made in accordance with the Recruitment Rules dated 19.06.1999. The Department of Telecommunications (Drivers) Recruitment Rules., 1999 are filed herewith as annexure and marked as Exhibit E-2.

7. That as per the recruitment rules, a post of driver is filled through selection by a Selection Committee consisting of a Chairman (Head of Recruitment Unit) and two member (Officers of Group 'A' and 'B' of Telecom Circle/Telecom District respectively). The procedure of recruitment of drivers includes publication of notification of vacancies through advertisement in leading newspapers and selection is made after holding driving test by a Selection Committee after passing out written examination from eligible candidates.

8. That the workman Vinod Kumar was not appointed/ engaged as Driver in the services of BSNL at all and his alleged appointment/engagement was also not in accordance with the procedure prescribed by rules. In BSNL, a person cannot be recruited off the Recruitment Rules.

9. That the deponent was not competent authority as per the Recruitment Rules to recruit drivers.

10. That the post of driver is a post of permanent nature in Group 'C' Non-Gazetted, Non-Ministerial in a fixed IDA pay scale corresponding to CDA scale and gets all the benefits of government rules relating to allowances, leaves, medical, promotion etc. A driver properly recruited gets monthly salary and does not get wages on daily or periodic basis.

11. That workman Vinod Kumar had never been posted as driver in SSA Bhiwani during my tenure *i.e.* 21.01.2000 to 09.04.2003 as D.E (P) & 23.07.2003 to 27.07.2004 as SDE (Coml.) at Bhiwani and to my knowledge nor had he been posted as driver at SSA Bhiwani even after my transfer to SSA Karnal *i.e.* after 27.07.2004.

12. That the log-books are official records and remain in the custody of the office of the SDE. The registers of log-books on completion were used to be kept in safe custody of the office of the SDE.

13. That the respondent/management of BSNL is a Govt.of India Enterprise and is governed by law applicable thereto. BSNL has been carved out from erstwhile DoT/ DTs/DTO. As per the rules and practice, daily wagers are engaged casually on the contingency of work on different days for which they are paid on daily basis. Nature of work of daily wager is not perennial.

14. That the claim of the workman Vinod Kumar is vague, baseless and devoid of any merits and therefore deserves dismissal.

**His affidavit was tendered by management and then he was cross-examination on 18.4.2012 by A/R for the Claimant.**

**His crossed examination is as follows:—**

Jeep No. HR 16B5051 belonged to our department. This vehicle used to be driven personally by SDO and in case he requires the services of any driver, he could engage somebody for a particular occasion. I do not know if Vinod was driving this vehicle on 03.02.2005 as emergency driver. I do not know what pay is given by the department to the drivers who are appointed as per rules. I do not know if the signatures of the drivers used to be obtained by those officers who hire the services of the driver on a particular occasion. There was no permanent driver during the time I remained in service. Now I am retired. I know the workman.

**Workman Arguments on Behalf of workman is as follows:—**

1. That the petitioner has filed the present claim petition-statement being a workman. Brief facts of the case are that on 7.3.2000 the petitioner was engaged/appointed as driver by the respondent-management and posted as such (driver) at Bhiwani and he was doing his duty as driver on the Jeep bearing registration No. HR16B/5051, which was the ownership of respondent No. 1. The petitioner was getting a salary of Rs. 2500/- per month and it was revised to Rs. 3000/- *w.e.f.* 2004. The work and conduct of the petitioner-workman remained satisfactory during his long service tenure. It was the permanent post of the petitioner but the respondents termed the same as daily wages.

2. That on 28.3.06 the petitioner reported his duty as usual but he was not allowed to do his work, rather he was told that his services are no longer required and in this way his services were terminated since then.

3. That the petitioner has worked continuously from 7.3.2000 to 28.03.06 (log-book) with utmost sincerity and probity to the entire satisfaction of his superiors and there was relationship of employee and employer.

4. That the termination of the service of the petitioner in such a manner was quite illegal, unjustified, capricious, void ab initio,without notice being not in accordance with the provisions of the Chapter V of the Industrial Disputes Act, 1947 and principles of natural justice.

5. That the respondents have also appointed fresh hands after the termination/retrenchment of the services of the petitioner but no opportunity of employment has been given to the petitioner and thereby the respondents have violated the provisions of the Industrial Disputes Act, 1947.

6. That the petitioner has requested the respondents many a times but in vain and thereafter the petitioner on 12.05.06 served a legal notice upon the respondent but the same remained reply-less. Hence, the petitioner filed the present claim petition.

7. On notice, the respondents put in appearance and filed their written statement taking several false and frivolous grounds, *inter alia*, that the matter is baseless, reference is bad in law. Not maintainable in the preset and this Hon'ble Tribunal has no jurisdiction to entertain, try and decide the petition. On merit, it has been alleged that the petitioner was never appointed/engaged as driver by the answering respondent. Log Book does not itself constitute a proof of his appointment. In nut shell the respondents have denied the claim of the petitioner on one pretext or the other and in the last prayed for dismissal of the claim petition has been made. In the additional pleas also it is alleged that the petitioner has no locus standi to file the petition and the provisions of section 25F of the Act does attract to the present petition and in the last prayer for the dismissal of the claim petition has been made.

8. The petitioner filed replication to the written statement of the respondents controverting the allegations made in the written statement and reiterating his stand taken in the claim petition.

9. Both the parties have led their oral as well as documentary evidence in support of their respective claims.

10. In support of his case, the petitioner himself appeared as PW1 and tendered his affidavit. He has fully supported his case as mentioned in the petition. His said evidence has gone unchallenged and unrebutted. He has stated that during his service tenure, the petitioner-deponent was falsely involved in a Motor Accident claim case *vide* FIR No. 43 dated 19.3.05, PS Tosham, district

Bhiwani, for which he faced trial and he was acquitted of the offence in which jeep belonging to the department bearing No. HR 16B 5051 was involved. So, it cannot be said that he was not appointed/engaged as driver by the department. Moreover, in the said MACT case arising out of that accident the respondent-department had compromised the matter by paying compensation amount, copy of which is already on the file. Therefore, it cannot be said that the petitioner was not the employee of the employer-respondents. There exists relationship of employee and employer. In his affidavit produced on behalf of the respondent-department, Jeet Ram son of Sh. Khushi Ram the then SDE, BSNL, has deposed that the deponent was not competent authority as per the recruitment rules to recruit driver. He has further stated that the post of a driver is a post of permanent nature and he is entitled to allowances, leaves etc. He has further deposed that a driver properly recruited gets monthly salary and does not get wages in daily or periodic basis. So, when the deponent was not competent authority, his affidavit is baseless does not attain any importance. From the above said evidence of the petitioner oral as well as documentary it is evidently clear that the petitioner was appointed/engaged as driver in the said department and he was getting salary and his services have been terminated illegal, unlawfully, without any notice and the same is liable to be set aside. It is also pertinent to mention here that a case was registered against one Tara Chand titled as State *vs*. Tara Chand son of Shri Giga Singh bearing FIR No. 423 dated 19.10.2002, under sections 332, 353, 504 and 379 IPC in PS Sadar Bhiwani, on the basis of the complaint made by the department on 19.10.2002. In that case also petitioner Vinod driver appeared as PW 4 on 30.07.2004 in the Hon'ble Court of Sh. V.P. Sarohi, the then learned Addl. Chief Judicial Magistrate, Bhiwani, and given evidence on behalf of the department. If he was not posted in the respondent-department as driver then how his name has come as a witness on behalf of the respondent to appear as a witness and in that case the accused Tara Chand was acquitted of the charge by the said Hon'ble Court on 2.08.2004. It is also worthwhile to mention here that a claim petition titled as Smt. Parkashi Devi *Vs*. Vinod Kumar and others, was filed against Vinod Kumar and SDE and Senior TOA of Bharat Sanchar Nigam Limited, Tosham, district Bhiwani, on 17.11.2005 and keeping in view the statement of the counsel for the petitioner, the said claim petition was dismissed as withdrawn on 16.05.2005 by the Court of Sh. V.K. Bakshi, the then learned motor Accident Claims Tribunal, Bhiwani. Moreover, in the said petition also the petitioner Vinod Kumar has been shown as driver of jeep bearing No. HR16B/5051. Therefore, the respondents have been deposing falsely and they have produced false and frivolous evidence to show that Vinod Kumar petitioner was never recruited/engaged as driver in the department. All the oral as well as documentary evidence falsifies the case of the respondents. The respondents have failed to prove and produce any iota of evidence against the said documentary evidence. Moreover, the orders are passed by the Hon'ble Courts and their authenticity cannot be doubted. Mere saying that he was not recruited or engaged in the department is driver has no significance in the eye of law particularly when there is overwhelming documentary evidence of the claimant-petitioner.

Submitted the above points of arguments, it is humbly requested that the claim petition of the petitioner may kindly be allowed as prayed for in the petition.

**Written submissions on behalf of Respondents/ Management. Wherein he stated as follows:—**

**Case of Workman**

The workman claims to be appointed/engaged as driver by respondent-management in the BSNL, Bhiwani since 7.3.2000. He claims to have given satisfactory continuous service till his alleged illegal termination on 28.03.2006. He also claims to receive initially Rs. 2500/- per month and subsequently Rs. 3000/- per month as salary. The workman alleges to have sent a demand notice dated 10.05.2006 and prayed for reinstatement with full back wages and continuity of service.

**Contention of Respondent/Management**

The respondents/management in their written statement denied the relationship of employer and employee between the respondents and the workman and categorically stated that the workman had never been appointed/engaged by them as driver, he was not an employee of BSNL, and he did not get monthly salary. The respondents/management also asserted that the petitioner-Workman was not a workman within section 2(s) of Industrial Disputes Act, 1947 and thus he lacks locus standi, and that no question of alleged improper termination arises hence provisions of Section 25-F and 25-B of Industrial Disputes Act, 1947 do not attract.

**Issues**

On the pleadings of parties, apart for the issued under reference, an additional issue was framed on 5.11.2008 for determination which is as follows:—

> "Whether the petitioner was workman of management of BSNL, Bhiwani and had been in continuous service from 7.3.2000 to 28.3.2006 of the respondents within the meaning of section 25-B of Industrial Disputes Act, 1947."

**Evidence led by workman**

To substantiate his claim, the petitioner/workman examined himself (WW1) and tried to show his engagement as driver by two court cases. (i) State *Vs*.Vinod, FIR No. 43

dated 19.3.2005 P.S. Tosham District Bhiwani u/s 279, 337 338 IPC. (ii) Motor Accident Claim case arising out of the alleged accident Smt. Prakashi Devi V. Vinod Kumar & Ors.

The workman although did not speak about any other case in his affidavit but has referred yet third case in his written submissions being State Vs. Tara Chand, FIR No. 423 dated 19.10.2002 u/s 332, 353, 504, 379 IPC PS Sadar Bhiwani wherein workman alleged to be a prosecution witness in complaint lodged by BSNL officials.

No other evidence oral or documentary was placed on record by the workman in proof of his Claim.

In his cross-examination the workman concedes that Motor accident claim case titled Smt. Prakashi Devi. *Vs*. Vinod Kumar was dismissed as withdrawal. The workman also concedes that he was acquitted in case State *Vs*. Vinod FIR No. 43 dated 19.3.2005 PS Tosham, Distt. Bhiwani as eye witness Smt. Prakashi Devi and Ved Prakash did not identify as accused —driver of the vehicle jeep No. HR 16B 5051 involved in the alleged accident. The workman also concedes that he turned hostile and did not identify accused. Tara Chand in case FIR No. 423 dated 19.10.2002 as a result of which accused Tara Chand was acquitted.

As regards log books, the workman after seeing original log-books, states and confirms in his cross examination that log-books for a period of 8.12.2003 to 28.3.2006 do not bear his signatures.

**Evidence led by Respondent/Management**

Respondent/Management examined MW1 Shri Jeet Ram who was posted as Divisional Engineer at Bhiwani (Rohtak SSA) from 20.1.2000 to 9.4.2003 who categorically denied the appointment/engagement of the workman as driver in services of BSNL at all and also stated that he did not appoint/engage the workman as driver nor he took any diriving test of workman for recruitment. He also stated on oath that no notice for recruitment of driver was issued, displayed or published during his tenure. Sh. Jeet Ram also proved Recruitment Rules of Drivers in BSNL Exhibit E-1 filed along with his affidavit. He also stated that at the date of alleged appointment *i.e.* 7.3.2000, the recruitment rules of drivers as framed by Ministry of Communication, Department of Telecommunications published in Gazette of India dated 19.6.1999 were in force and explained the recruitment procedure and proved the said Recruitment Rules *vide* Exhibit E-2 filed along with the affidavit.

Nothing material could be extracted from cross-examination of MW1 Shri Jeet Ram.

**Arguments**

It is settled law that onus lies on the workman to prove his case.

NO RELATIONSHIP OF EMPLOYER AND EMPLOYEE APPOINTMENT—NOT PROVED

The workman claims to have been appointed as driver by respondent/management and claims to draw monthly salary. The workman could not establish his appointment by producing any appointment letter or salary slip. Admittedly no appointment letter was issued. Post of driver is a permanent post and requires to be validly filled in after following recruitment procedure. Mere single statement on affidavit without supporting evidence does not prove the fact. On the contrary, MW1 Shri Jeet Ram stated that workman had never been appointed as driver in BSNL, Bhiwani. Workman fails to prove his contention. Thus no valid, legal appointment was established. Alleged appointment, if any, is illegal and against Articles 14 and 16 of Constitution of India. Hence, workman cannot get benefit of Sections 25-F & 25-B. There is no relationship of employer and employee between the respondent/ management and the workman.

COURT CASES —DO NOT ESTABLISH WORKMAN AS DRIVER

The main thrust of the workman to prove his case in on the court cases mentioned earlier. Material facts and admissions extracted from the cross-examination of workman completely demolishes the case of the workman.

In motor accident case FIR No. 43 dated 19.3.2005 u/s 279, 337, 338 IPC State *Vs*. Vinod, it is admitted by the workman that he was acquitted because eye witness Smt. Prakashi Devi and Ved Prakash did not identify him as accused driver of the vehicle jeep No. HR 16B 5051 belonging to respondent/management department. It is an adjudicated fact that workman Vinod was not a driver of the vehicle of the department respondent/management. The Chief Judicial magistrate, Bhiwani *vide* judgment dated 2.6.2006 while acquitting accused-workman Vinod observed that prosecution has miserably failed to connect accused with the alleged accident. The said judgment and admission by the workman in this regard itself falsify the fact that workman was driver on the vehicle of respondent/ management.

Motor Accident Claim Petition titled Prakahsi Devi *Vs*. Vinod & Ors. was admittedly dismissed as withdrawn. It too does not establish that workman was driver of respondent/management.

In case FIR No. 423 dated 19.10.2002 State *Vs*. Tara Chand, it is admitted by workman that he turned hostile and did not identify accused Tara Chand. Police may have wrongly put Vinod as witness in the aforesaid criminal trial. Moreover, the said incident was of 19.10.2002 and hence does not come within the ambit of inquiry of this Hon'ble Tribunal as the scope of inquiry for the purpose of continuous service dates back only to preceding 12 calendar months of the alleged dated of termination which is 28.3.2006 in the instant case. Further, according to section 21 of Evidence Act, admissions cannot be proved by or on

behalf of person who makes them. The workman tries to prove his own statement given in that case to prove his own case which is not permissible under law. His earlier statement in the said criminal case is not relevant and cannot be taken into evidence.

CONTINUOUS SERVICE—NOT PROVED-LIMITED SCOPE OF INQUIRY

The Workman states that he used to sign the log books whereas he admits in his cross-examination that log books from 8.12.2003 to 28.3.2006 do not bear his signatures. The scope of inquiry for the purpose of adjudication of continuous service is 12 calendar months, preceding date of alleged termination which is 28.3.2006 in the instant case. In the preceding 12 calendar months, the workman could not establish his presence in the office. The workman could not establish that he actually worked during a period of 12 calendar months preceding 28.3.2006, the date of alleged termination. Thus the workman could not be said to be in continuous service within the meaning of section 25-B.

REGULARISATION/ABSORPTION — NO RIGHT

Although, the workman fails to prove his case, without admitting anything, it is submitted that daily wager has no right to be absorbed or regularized in service. Completion of 240 days of continuous service by itself does not create a ground for absorption. Working for more than 240 days does not ipso facto entitle the workman to be regularized. It is settled law that illegal appointment should not be regularized and that persons entered by backdoor must be shown backdoor.

CASE LAW—RELIED ON

(2008)2 SCC 552 Chandra Shekar Azad Krishi Evam Prodyogiki Vishwadilaya *Vs.* United Trades Congress & Anr.

Held: Working for more than 240 days continuously from the date of engagement by itself does not confer right to be regularised ..... In the event the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal.

(2005)2 SCC 470 Dhampur Sugar Mills Ltd. *Vs.* Bhola Singh.

Held: Completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization, particularly in a case when the workman had not been appointed in accordance with the extant rules.

(2005) 8 SCC 750 Surendra Nagar District Panchayat *Vs.* Dayabhai Amar Singh.

Held: Scope of inquiry before Labour Court was confined to only to twelve months preceding the date of termination to decide question of continuation of service ..... Burden of proof lies on workman.

In view of the above submissions, it is prayed that the claim of the workman be rejected with costs.

In the light of contention and counter contentions I perused the claim statement, written statement, rejoinder and evidence of the parties on record. Principles laid down in the cited rulings and settled law on the relevant points.

Perusal of claimant evidence shows that he gave his oral as well as possible documentary evidence to show that he was employee of the management. In his evidence he pointed out that during his service tenure claimant was falsely implicated in a Motor accident case *Vide* FIR No. 43 dated 19.3.2005, Police Station, Tosham District Bhiwani for which he face trial and he was acquitted to the offences in which Jeep belonging to the Department bearing No. HR 16B 5051 was involved so it cannot be said that he was not driver of the Department. Moreover MACT case arise out of the aforesaid accident has been compromised. Copy of which is on record which shows that compromise took place and compensation was paid to petitioner of Motor Accident claim petition.

It is also relevant to mention here that FIR No. 423, dated 19.10.2002 *u/s* 332, 353, 504, 379 IPC in Police Station Sadar Bhiwani was lodged on the basis of complaint made by the department on 19/10/2002. Police submitted chargesheet against accused Tarachand. On Chargesheet concerned magistrate took cognizance. Thereafter during proceeding evidence claimant Vinod Kumar produced as PW4 on 30.7.2004 in the court of additional chief judicial Magistrate, Bhiwani. He gave evidence on behalf of department. In which accused Tarachand was acquitted on 2/8/2004.

On the basis of evidence of claimant/workman it is crystal clear that workman during proceeding of aforesaid two cases was shown to be employee of management as driver. It is not in dispute that aforesaid cases took place before the reference of the present Industrial Dispute. Even than management is denying the employer and employee relationship with claimant.

Moreover management is keeping mum on the point of registered notice giving to management by workman prior to institution of proceedings of instant case.

It is also relevant to mention here that management could not explain with possible, credible and reliable evidence that workman Vinod Kumar was not such person whose name figures in aforesaid motor accident claim petition and FIR of criminal case.

In addition to it claimant/workman in support its case gave all possible and available evidence at his end.

Moreover in rebuttal management could not dare to produce the documents in possession that is attendance

register etc. and could not offer explanation how the photocopy of Log-Book of aforesaid car of department was in possession and filed by workman in the instant case.

In these circumstances there is sufficient evidence on record to come on this conclusion that workman was at least daily wager driver of the management. Although management has left no stone unturned to whistle out his claim.

On the basis of aforesaid discussion I am considered view that claimant Sh. Vinod Kumar was driver of management on daily wages.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr *Vs.* Gitam singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000/- (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh *Vs.* Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited *Vs.* Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus," grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated : 27.01.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 761.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेक्रेटरी संस्कृति मंत्रालय एंड अदर्स, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 761.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/2011) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Secretary, Sanskriti Mantralaya, New Delhi & Others and their workman, which was received by the Central Government on 03/02/2014.

[No. L-42025/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**PRESENT:**

Dr. Manju Nigam, Presiding Officer

**I.D. No. 01/2011**

**BETWEEN**

Vikas Kumar Gupta S/o Shri Baidhnath Prasad
R/o Village - Malkauli, Post - Naripur
PS - Bagha-2, Distt. Champaran
Bihar-845 105

AND

1. Secretary
Sanskriti Mantralaya
Bharat Sarkar
Sashtri Bhawan, New Delhi

2. Director & Head of Office
Rashtriya Sanskriti Sampada Sanrakshan Anusandhan Prayogshala
(NRLC)
E/3, Aliganj, Lucknow

**AWARD**

1. The present claim has been filed by the workman Vikash Kumar Gupta under provisions contained in the

Section 2A of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Rashtriya Sanskriti Sampada Sanrakshan Anusandhan Prayogshala (NRLC), Lucknow.

3. The case of the workman, in brief, is that he had been appointed on the post of bilingual computer typist on 14.06.2006; and worked accordingly up to 08.05.2009 continuously. It has been stated by the workman that though the duties performed by him were of regular nature but he was paid as daily wager in contravention to the Government order *vide* OM No. 49014/2/86-Estt. (C) dated 7.6.88 & No. 15022/4/90-Estt. (Allowances) dated 9.6.1994. It is alleged by the workman that his services have been terminated by the management by orally without any notice or notice pay in contravention to the provisions contained in Section 25 F of the I.D. Act, 1947; and accordingly, the workman has prayed that his termination *w.e.f.* 08.09.2009 be declared injustified and illegal and he be reinstated with consequential benefits, including continuity in service and full back wages.

4. The management of the NRLC has disputed the claim of the workman by filing its written statement wherein it has disputed the claim of the workman, submitting that the opposite party establishment does not comes within the purview of 'industry', therefore, the present case is not maintainable before this Tribunal. It has further submitted the workman was engaged in the department on daily wages as and when required as per need on the basis of contract on specified terms and his time period for engagement was extended from time to time. It is also submitted by the management that due to non-availability of work, the services of the workman got terminated on 08.08.2009 as per terms of the contract, therefore, there was no termination of his services as alleged by him. It is further submitted that the workman was engaged for contractual services to carry out computer typing *vide* order dated 01.06.2007 and he was required to work as daily rated worker as per terms of the contract and he was paid accordingly, therefore, not entitled for payment at par with the regular employees. Hence, the management has prayed that the claim of the workman be rejected out rightly being devoid of merit.

5. The workman has filed its rejoinder; wherein it has submitted that the opposite party is an 'industry' within the provisions contained in the I.D. Act and in this regard he has relied upon the Banglore Water Supply case. Further, he has also denied his engagement on contract basis and has reiterated his averments made in the statement of claim.

6. After completion of the pleading of the parties, the workman field list of documents, paper No. W-10 and application for summoning the documents from the management, paper No. W-11. In rebuttal the management neither filed any documents in support of their case nor any objection to the application summoning the documents from the management.

7. The parties kept absenting themselves since 28.03.2012; and thereafter several dates have been fixed for hearing in the present case; but none turned up from the either parties to press their case; accordingly, the case was reserved for award, keeping in view the reluctance of the parties and long pendency of the case since 2011.

8. The workman has come forward with the case that he had been appointed on 14.06.2006 with the management and worked continuously till 08.05.2009; but has not filed any evidence in support of his claim. Although he summoned certain documents from the opposite party; but in the event of non-filing of any objection thereto or documents by the management, the workman was to come forward to take resultant benefit; but he failed to do so, as he absented himself all together. In M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary *vs.* Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in Sanker Chakravarti *vs.* Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries *vs.* Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited *vs.* State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. *vs.* State of U.P. and others 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

From the photocopy of the documents filed by the documents, which are not duly proved by the workman though his oral evidence, it cannot be arrived at the conclusion that the workman actually worked with the management continuously from 14.06.2006 to 08.05.2009 as claimed by him or he worked for 240 days in the year preceding his termination; and his termination was in contravention of the provisions of the Section 25 F of the Industrial Disputes Act, 1947.

9. In the above circumstances, it appears that the workman does not want to pursue its claim on the basis of which he has raised the present industrial dispute; therefore, the present industrial dispute is decided as if there is no grievance left with the workman. Resultantly no relief is required to be given to the workman concerned. The industrial dispute under adjudication is adjudicated accordingly.

10. Award as above.

Lucknow
23rd September, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

**का॰आ॰ 762.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, एन सी सी ग्रुप हैड क्वार्टर्स, गोरखपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 104/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं॰ एल-14012/02/2011-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

**S.O. 762.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 104/2011) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commandant NCC Group Headquarters, Gorakhpur and their workman, which was received by the Central Government on 03/02/2014.

[No. L-14012/02/2011-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW**

**PRESENT :**

Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 104/2011**

Ref. No. L-14012/2/2011-IR(DU) dated: 23.05.2011

**BETWEEN**

Shri Upendera Pandey
R.K. Puram Colony,
Near Samajghar, Daudpur,
Gorakhpur

**AND**

The Commandant
NCC Group Headquarters
Canal Road, Mohaddipur
Gorakhpur

**AWARD**

1. By order No. L-14012/2/2011-IR(DU) dated: 23.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Upendera Pandey, R.K. Puram Colony, Near Samajghar, Daudpur, Gorakhpur and the Commandant, NCC Group Headquarters, Canal Road, Mohaddipur, Gorakhpur for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the action of the management of commandant, NCC Group Headquarters Gorakhpur in terminating services of Shri Upendra Pandey, cashier cum Bradma Operator *w.e.f.* 01/09/2009 without complying with the mandatory provisions of industrial disputes Act, 1947 and without following the due procedure of regulation of employees of unit run canteen is legal and justified? what relief the applicant is entitled to?"

3. The case of the workman, Upendra Pandey, in brief, is that he was appointed as cashier cum bradama operator on 13.07.2004 and was granted two increments of Rs. 200/- each. It is alleged by the workman that the management has terminated his services *w.e.f.* 01.06.2009 without any; written order or any opportunity of hearing to him. Accordingly, the workman has prayed that the action of the management in terminating his services without complying with the mandatory provisions of I.D. Act as well as Regulations of employees of Unit Run Canteen, be declared illegal and he be reinstated with all consequential benefits including salary.

4. The management of the NCC Group Headquarter has denied the claim of the workman by filing its written statement wherein it has disputed the appointment of the workman on the basis of the irregularities committed in the appointment letter, appointing the workman, renders it as an illegal document. It has also disputed the appointment of the workman on the basis of other irregularities committed while making his appointment and has pleaded that the name of the workman has neither been sponsored by the Employment Exchange nor any advertisement was published, inviting application for filling the vacancy. The management has submitted that after due notice of a week's time, the workman was called for personal hearing on 31.05.2009 to clarify the facts of his illegal appointment. It is submitted by the management that the workman was asked to explain as to whether his name was ever forwarded by the Employment Exchange or he applied in response to any advertisement or he ever appeared in any test or interview or he ever gone through some medical examination or his antecedents were ever verified before reporting to the duty. It is further pleaded by the management that when the workman failed to explain the circumstances under which he was appointed through an 'illegal document', his services were terminated *w.e.f.* 01.06.2009. It is also submitted by the management that the services of the workman were terminated when the

management came to know that the appointment was based on illegal document; and accordingly, the management has prayed that the claim of the workman be rejected being devoid of merit and no relief be granted to him.

5. The workman has filed rejoinder whereby apart from reiterating his averments in the statement of claim he has denied he was ever given any opportunity of personal hearing by the management before terminating his services as he never received any information or letter from the opposite party to the effect.

6. The parties have filed photocopies of various documents in support of their respective claim. The workman has examined itself whereas the management has examined Colonel B.P. Shahi, Brigadier (Retd.) A.K.R. Tripathi and Colonel Prabhat Ranjan in support of their stands.

7. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

9. Heard authorized representatives of the parties and perused entire evidence on record.

10. The authorized representative of the workman has submitted that he had been appointed on the post of Cashier-cum-Bradma operator *vide* appointment letter dated 13.07.2004, issued by the managemet, which is admitted by the management; and this leaves no occasion for the management to terminate the service of the management without giving any opportunity to the workman to defend himself. It has been argued by the workman that the contention of the management that irregularities were observed during issuance of the appointment letter and due procedure prescribed for appointment were not followed, then it is not a fault on the part of the workman as there is no allegation of misrepresentation by the workman for obtaining the job. The workman has also argued that the action of the management in terminating the services of the workman without giving him any opportunity to defend himself before a formal inquiry is in violation to the principles of natural justice.

11. In rebuttal the management has stressed on the point that the appointment of the workman was done through an illegal documents/appointment letter which is not sustainable in the eye of law as it does not incorporate certain facts regarding approval of the approving authority or who is the appointing authority or any finding regarding fitness before any selecting board etc. It has also argued that the appointment of the workman was made by passing the due procedures of appointment; therefore, same was liable to be terminated as the workman could not furnish any detail regarding the process adopted during the course of his appointment; which rendered his appointment to be illegal one.

12. I have given my thoughtful consideration to the rival contentions of the parties and perused entire material available on record.

13. The case of the workman is that he was appointed by the opposite party *vide* appointment letter dated 13.07.2004 on the post of Cashier-cum-Bradma Operator and during his working with the opposite party he was granted two annual increments @ Rs. 200/- each as per terms mentioned in the appointment letter. Thereafter, the opposite party terminated his services w.e.f. 01.06.2009 in an arbitrary manner without any rhyme or reason or without affording him any opportunity of hearing to him and against the provisions of the Industrial Disputes Act, 1947.

14. Per contra, the management has come up with the case that the workman is relying upon a letter which is an illegal document having so many irregularities as it did not mention many vital facts in it, likewise the terms and condition of the appointment and the workman has not under went with the prescribed procedures for the appointment; accordingly, he cannot be allowed to continue the services as per law.

15. The opposite party has taken preliminary objection that the applicant is not a 'workman' as defined in the Section 2 (s) (iv) of the I.D. Act, 1947. The workman has denied the contention of the management. Section 2 (s) of the Industrial Disputes Act, 1947 defines 'workman' as under.

2. "(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) .....

(ii) .....

(iii) .....

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

In this regard the onus was on the management to come forward with evidence such as details of work liabilities in respect of workman and powers conferred upon him to show that the applicant was actually engaged in managerial or supervisorial work; but the management has utterly failed

to do so, in as much as, apart from above pleading he has corroborated the same with cogent documentary evidence. On the contrary it is evident from the appointment letter dated 1.07.2004, issued to the workman, that the workman had been appointed as cashier-cum-Bradma Operator which is clerical nature of post; also that he was not conferred upon any financial or administrative powers. It is not denied that the workman had not worked with the opposite party, the onus is on the opposite party to explain in what capacity he has been inducted with the opposite party, which puts him out of the purview of the definition of 'workman'. Therefore, on the basis of the evidence on record, I am of the opinion that the applicant is 'workman' as defined in the Section 2 's' of the Act.

16. From contentions of the parties it is evident that they have relied on the appointment letter dated 13.07.2004. The workman has taken a stand that he was appointed in pursuance to said appointment letter and was granted two annual increments; whereas the management has disputed the validity/legality of the said appointed letter on the basis of non-mention of certain facts regarding appointment etc. The contents of the said appointment letter are reproduced hereunder:

"Telephone: 2200165 NCC GP HEAD QUARTERS
GORAKHPUR - 273008

6005/CSD/Fin. 13th July, 2004

Shri Upendra Pandey
R.K. Puram Colony,
Doudpur, Gorakhpur

**APPOINTMENT**

1. Your appointment as Cashier-cum-Bradma operator of CSD Canteen NCC Gp HQ Gorakhpur in pay of Rs. 2000.00 (Rupees Two Thousand only) per month, is hereby approved.

2. Annual increment will be at the discretion of Gp Cdr.

-Sd.-
(S.C. Singla)
Lt. Col.
OI/C Canteen"

From perusal of the above appointment letter is very much clear that the workman was conveyed of the approval of his appointment and also the term of his employment were mentioned in the said appointment letter *i.e.* quantum of his pay and admissibility of annual increment. While disputing the above appointment letter the management has not pleaded that the above appointment letter was obtained by the workman by misrepresentation or fraud. It is also not pleaded that the said appointment letter is forged one or it has not disputed the signatures of the Lt. Col. S.C. Singla. It is also not pleaded that Col. Singla was not the appointing authority, then mere contention that it does not bear any mention regarding appointing authority or fitness of the applicant by the Selection Board or non-mentioning of appointing authority, does not hold good. It was for the management to observe these technicalities at the time of issuance of his appointment letter and not later on.

The appointment of the workman is not denied by the management. It is also not denied the workman was given two annual increments on the basis of said appointment letter. It is also not denied that the said letter was not issued by Lt. Col. S.C. Singla under his signatures, then it is not open to management to dispute the legality of the appointment letter if any irregularity or omission is there, it is the fault on the part of the management. Even if certain fact are not mentioned in the appointment letter about procedure adopted, which is not of much importance to mention in the appointment letter as the appointment letter dated 13.07.2004 has conveyed the approval of the appointment and the same is comprehensive in itself. The appointment letter is sort of communication to the appointee about approval of the competent authority of his appointment and this approval of the authority is given in the related files and the same need not to be reflected in the body of the appointment letter as contended by the management. Further, terms of services are vital part of the appointment letter *i.e.* it must mention about rate or payment and admissibility of various allowances, increment or terms of terminating of services etc. In the instant case the appointment letter dated 13.07.2004 very well reflected about rate or pay and annual increment, therefore, it cannot be said that the same was illegal, particularly when the genuineness of the signatures are not disputed by the management.

17. The terms of reference comprises of two issues firstly as to whether the termination of the workman was in violation to the provisions of the I.D. Act, 1947; and secondly, as to whether the termination of the workman was in violation to the due procedure of regulation of employees of Unit Run Canteen? In this regard, on looking into the question regarding compliance of provisions of I.D. Act, 1947, it comes out that admittedly the workman had been appointed with the opposite party *vide* appointment letter dated 13.07.2004 and worked as such till the date of alleged termination *i.e.* 01.06.2009; and as per provisions of Section 25F of the Act, which reads as under:

**"25F Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workmkan has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the approporiate Government by notification in the Official Gazette."

It is not the case of the management that the workman had not been appointed by them. It is also not their case that the workman worked with them continuously up to the alleged date of termination *i.e.* 01.06.2009. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC)* Hon'ble Apex Court came to the conclusion that were the workman proves that he had been in employment with the employer for a period of 240 days uninterruptedly, in a year preceding his alleged termination, he is entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947.

Therefore, in view of above case law, it is for the management to comply with the mandatory provisions of Section 25 F of the Act as the workman worked continuously from 13.07.2004 to 31.05.2009 continuously and there is no denial in this regard on behalf of the management, therefore, the action of the management in terminating his services without complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947 was illegal and unjust.

18. Now coming to the second point of reference, regarding validity of termination of the services of the workman by the opposite party without following the due procedure of regulation of employees of Unit Run Canteen, the workman has relied on the "Rules regulating the terms and conditions of service of civilian employees of unit run canteens paid out of non public funds", paper No. 3/9 to 3/21; wherein procedure for dismissal/discharge of employees on account of misconduct/indiscipline is given, paper No. 3/21., which provides that due procedure is to be adopted in accordance with the principle of natural justice while dismissing/discharging the employees, which included issuance of charge-sheet, appointment if inquiry officer, holding of any inquiry, persual of the report of Inquiry Officer by the Disciplinary Authority, issuance of show cause notice, issuance of order of punishment etc.

In this regard, it is contended by the opposite party that the workman was called for personal hearing on 31.05.2009 in the office of the Group Commander, NCC Group Headquarters, Gorakhapur to clarify the facts of illegality of his appointment on 13.07.2004; but this fact was denied by the workman that he was ever called upon by the management or was given any opportunity of personal hearing before terminating his services on 01.06.2009. In view of settled procedure of law regarding the pleadings of the opposite party about commission of alleged irregularities during the appointment of the workman or non-observance of due procedure, it was incumbent upon the management to set up an inquiry to probe into the matter and submit its report before appropriate authority for necessary action. It was onus on the management to prove that the inquiry was conducted and during inquiry evidence in the matter was recorded. No document was produced to support the contention that the inquiry was conducted in this court, as no inquiry proceeding as submitted, by the management that it conducted the inquiry is produced nor any inquiry report is produced. The workman was required to call upon before the inquiry to explain his position, but the management utterly failed to observe this settled procedure of law; instead it shifted the burden on the workman by calling him to show the proof of the formalities that were required to observe during his appointment. This can be understood very easily that all the documents/details relating to the appointment of an employee is readily available with the management and it can go throught it at any time in order to find out any alleged irregularity committed during the appointment of an employee; but in present case the opposite party adopted a different way just to protect the officers involve in the non-compliance of the procedure required to be followed. The workman has specifically pleaded that the management never called him for personal hearing whatsoever; and also, the management could not prove through any cogent evidence that it ever called upon the workman to defend his case, which makes the action of the management arbitrary, even if it is taken for the argument's sake that som error, mistake or omission was committed during the course of appointment of the workman as it was not open for the management to terminate the services of an employee, who has rendered the services, regularly, without giving any show cause or giving him any opportunity for defence. There is no iota of the evidence to show that the management ever adopted the procedure prescribed in the regulation of employees of Unit Run Canteen. The management has not rebutted this fact that the above regulations were not applicable upon the workman, therefore, the management was ought to observe said procedure before taking any action against the workman in which the management failed all together.

19. Thus, in view of the facts and circumstances of the case and the discussions made hereinabove, I am of the considered opinion that the action of the management of Commandant, NCC Group Headquarters, Gorakhapur in terminating the services of the workman *w.e.f.* 01.09.2009 was illegal and unjustified; as the said termination of

service of the workman was neither in compliance of the provisions of the Industrial Disputes Act, 1947 nor with the regulation of employees of Unit Run Canteen.

20. As regards relief that could be granted to the workman, it is pleaded by the management that the appointment of the workman was done in the contravention to the prescribed procedure for appointment *i.e.* his name was not sponsored by the Employment Exchange, which is also admitted by the workman; and the workman did not face any Selection Board , his name was not approved by the Selection Board/Appointing Authority etc. In this regard it has relied on *Secretary, State of Karnataka & others vs Uma Devi (3) & others (2006) 4 SCC 1 and State of Bihar vs Upendra Narayan Singh & others (2009) 5 SCC 65* wherein Hon'ble Apex Court has held that "persons appointed by back-door methods or as a result of favoritism, nepotism or corruption have been found to be lacking in devoting to duty and efficiency. However, evil consequences of the unwarranted sympathy shown in such cases has been gradually realized by the Courts and thus relief of reinstatement /regularization has been denied to illegal appointees/back-door entrants."

In Jagbir Singh *v*. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327: (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal *v*. Santosh Kumar Seal and others (2010) 2 SCC (L&S) 309 Hon'ble Apex Court has observed as under:

"However , in recent past, there has been a shift in the legal position and in a long line of cases, this Court, has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, partiuclarly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."

21. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

22. Having regards to these facts that the workman has worked as regular Cashier-cum-Bradma Operator and getting Rs. 2400 per month at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump-sum amount towards compensation only.

23. Accordingly, the management is directed to pay a sum of Rs. 1,50,000 (Rupees One Lakh Fifty Thousand only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, falling which; the same shall carry interest @ 8% per annum.

24. The reference is answered accordingly.

25. Award as above.

Lucknow
1st November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 11 फरवरी,2014

**का॰आ॰ 763.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधातत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं॰ 01/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12012/161/2004-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 763.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 11-02-2014.

[No. L-12012/161/2004-IR(B-II)]
RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/01/2005** Date: 19.11.2013.

**Party No. 1 :** The Regional Manager,
UCO Bank, Regional Office,
Bhagwaghar Layout,
Dharampeth, Nagpur.

***V/s.***

**Party No. 2 :** Shri Sanjay Hegu
Near Mukharji Bangala,
R/o. Rout Wadi, Akola,
Distt. Akola (MS).

**AWARD**

(Dated: 19th November, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of the UCO Bank and their workman, Shri Sanjay Hegu, for adjudication, as per letter No. L-12012/161/2004-IR (B-II) dated 23.11.2004, with the following schedule:—

> "Whether the action of the management of UCO Bank through its Regional Manager, Regional Office, Nagpur in dismissing the workman Shri Sanjay S/o. Ramappa Hegu PFM No. 36026 Typist from service *w.e.f.* 30.08.2003 is just and legal? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Sanjay Hegu, ("the workman" in short) filed the statement of claim and the management of UCO Bank, ("Party No. 1" in short) filed the written statement.

The case of the workman as presented by the statement of claim is that UCO Bank is a Nationalised Bank and the service conditions of the employees of Party No. 1 are governed by the provisions of Sastry Award, Desai Award and different bi-partite settlements signed between the Indian Bank's Association and Federation of Bank employees and he came to be appointed in the services of Party No. 1 as a typist in the year 1983 and while he was serving at Akola Branch as a typist, he was served with the charge sheet dated 17.07.1990 by the Disciplinary Authority and simultaneously, departmental enquiry was ordered and one Shri Bhombe was appointed as the enquiry officer and pending departmental enquiry, he was put under suspension, *vide* order dated 10th March, 1990 and besides the initiation of the departmental enquiry, the Party No. 1 also filed a F.I.R. against him at Akola Police Station, as a result of which, a criminal case was registered against him and as the facts of the criminal case and so also the departmental equiry were similar to larger extent and continuance of the departmental action would have been prejudicial to the evidence to be brought before the criminal court, he approached the Hon'ble High Court of Judicature of Bombay, Bench at Nagpur by filing writ petition No. 2554/1990 and the Hon'ble Court was pleased to stay the further proceedings of the departmental enquiry initiated against him, for certain period, *vide* order dated 18.10.1990 and as such, Shri Bhombe, the enquiry officer did not proceed with the enquriy and thereafter, for some reasons, the Party No. 1 appointed another enquiry officer, namely, Shri Shendre in place of Shri Bhombe and he faced his trial in the court of the Judicial Magistrate First Class, Akola in the criminal case and was acquitted of all the charges by the judgment dated 30.10.1999 and soon after his acquitall in the criminal case, Party No. 1 appointed one Shri Pande in place in Shri Shendre, to conduct the departmental equiry against him, but unfortunately, the said enquiry officer conducted the departmental enquiry exparte and submitted his report dated 16-06-2003 to the Disciplinary Authority and in his report, the equiry officer held the charge No. 1 to heve been proved in part against him and all other charges not to have been proved and the disciplinary authority, after conducting farce of personal hearing, awarded the punishment of his dismissal from services, *vide* order dated 30.08.2003 and the appeal preferred by him against the order of punishment was dismissed by the appellate authority, *vide* order dated 12.03.2004.

The further case of the workman is that as the facts involved in the criminal case and the charge sheet dated 17.07.1990 submitted against him were identical and similar and he was acquitted in the criminal case, the Party No. 1 had no right to proceed with the departmental enquiry and it would have been just and proper to drop the departmental proceedings, but Party No. 1 with biased mind, proceeded with the enquiry against him illegally, without following the principles of natural justice and made a farce of declaring the charge as proved and awarded the punishment of dismissal and as the order impugned is unjust and illegal, the same is liable to be set aside. It is further pleaded by the workman that on 23.04.2002, he sought for permission to engage an advocate for his defence and the management representative recorded of his no objection to the same and the enquiry officer accorded permission for engagement of advocate, but on the next date of the enquiry, *i.e*. on 29.05.2002, when he attended the enquiry with his lawyer, the enquiry officer recalled his earlier rulings and did not allow him to defend by the lawyer and after having once granted permission for engagement of advocate, rejecting the said permission, on the next date, amounts to unfair practice.

The further case of the workman is that after one year of his suspension, he was entitled for full pay and allowances, but Party No. 1 even did not pay 1/2 of the pay as subsistence allowance and made his life pathetic and miserable and non-payment of adequate and legal subsistence allowance and subjected him to trial before the enquiry officer goes to establish that no proper and reasonable opportunity of defence was given to him, by the enquiry officer and the same is against the principles of natural justice and under such circumstances, continuing with the enquiry exparte is illegal and the enquiry is invalid.

It is also pleaded by the workman that the enquiry officer has declared the charges 2 to 4 as not proved and charge No. 1 to have been partly proved and as such, the order of dismissal without notice for a partly proved charge

is not justified and is illegal and the findings of the enquiry officer are based on conjunctures and surmises and there is no proper evaluation of evidence and much reliance was placed by the enquiry officer on a fraudulent document, *i.e,* a letter of confession dated 6th March, 1990 purported to have been signed by him and infact, the contents of the said letter was fraudulently created by the management themselves and one Shri Kuberkar, A.S., Senior Officer was sent for pre-investigation, by the Divisional Manager, Shri Patankar and Shri Kuberkar advised him to appear and see the Division Manager at Nagpur and accordingly, he called upon the Divisional Manager on 04.03.1990 at Nagpur and he was threatened by the Divisional Manager that if the amount of Rs. 70,000 would not be deposited by him, then Police complaint would be filed against him and in case of his depositing of the said amount, the matter would be treated as closed and at that time, he was very young and was newly married and he could not visualize the complexity of the situation and even though he was not involved in the incident, to avoid Police action, he assured the Divisional Manager that he would arrange the money from his relatives and he would deposit the same and believing on the threat-cum-advice of the Divisional Manager, he deposited the amount of Rs. 70,000 in total on 04.03.1990, 05.03.1990 and 06.03.1990 and when, he called upon the Divisional Manager, the Divisional Manager asked him to sign on three blank papers and as the Divisional Manager was the highest authority of the Region, he signed on three blank papers at the place indicated by Shri Patankar, the Divisional Manager and Shri Patankar managed to get typed the contents of the letter dated 06.03.1990 on the blank paper signed by him and as the document, basis on which, the enquiry officer held the charge No. 1 to have been proved in part is a fraudulent and fabricated document, the finding of the enquiry officer can be held to be illegal and perverse and that ground alone, the order impugned is liable to be set aside and the findings of the enquriy officer are based on erroneous reasoning, much less, no proper reasoning and the findings are given in a most casual manner and non-application of mind writ large on the face of the findings and therefore, the findings are pervese and the disciplinary authority without observing the principles of natural justice awarded, shockingly disproportionate punishment of dismissal, without notice and as such, the purnishment is arbitrary, unjust and illegal and since he was already acquitted by the criminal court, it was necessary on the part of the disciplinary authority to deal with the matter as per the powers vested upon it, by Sastry Award and his past record was not taken into consideration, before awarding a shockingly disproportionate punishment of dismissal without notice and the action is therefore, unjust, unfair and illegal and he is entitled for reinstatement in service with full back wages and all other consequential benefits.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman was served with the charge sheet dated 17.07.1990 and though the workman was acquitted by the Judicial Magistrate First Class, Akola on 30.10.1999, in the cirminal case, but the acquittal was not a clean acquittal and he was acquitted by giving the benefit of doubt and the enquiry was conducted on various dates during 04.04.2002 to 20.03.2003 and full opportunity was given to the workman to defend his case and due to the non-cooperation of the workman in participating in the enquiry, there was delay in the enquiry, but the same was concluded with scrupulous regard for natural justice and the enquiry was not conducted hastily and the enquiry officer submitted his report on 16.06.2003 and the order of the disciplinary authority dated 30.08.2003 confirmed the findings recorded by the enquiry officer and the appeal preferred by the workman was dismissed by the appellate authority, by a reasoned order dated 12.03.2004. The further case of the Party No. 1 is that the workman deliberately did not want to participate in the enquiry and created one or the other obstacle and the findings of the enquiry officer were based on the evidence on record and the evidence was judiciously screened by the enquiry officer and subsistence allowance was paid to the workman as per financial rules and regulations and the findings of the enquiry officer did not base on any conjuncture and surmises and the enquiry officer impartially assessed and scrutinized the evidence on record of the enquiry rationally and on the basis of the evidence on record, the enquiry officer held only the charge No. 1 to have been proved partly, which clearly shows that the enquiry officer without any prejudice or bias conducted the enquiry and the order of the dismissal was passed not ony on the basis of strong evidence, but in accordance with the rules and regulations and as the workman deliberately did not participate in the enquiry, the enquiry officer was forced to continue the enquiry exparte and the findings of the criminal court has no bearing on the conduction of the departmental enquiry and the findings of the same and hence, the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmenal enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 20.02.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that apart from initiation of a departmental enquiry against the workman, a criminal case had been registered against him or the same allegations and the workman was acquitted by the criminal court on 30.10.1999 and he was exonerated from all the criminal charges and in view of the acquittal of the workman, the departmental enquiry initiated against him should have

been dropped by Party No. 1. It was further submitted by the learned advocate for the workman that the workman was not paid the subsistence allowance and pay as required under the bipartite settlement and the workman is entitled for such allowances and pay as required to be paid under clause 3(C) of Chapter-XVII [Disciplinary Action and Procedure therefore of Sastry Award (Bipartite settlement].

The learned advocate for the workman also submitted that out of the four charges levelled against the workman, the enquiry officer only found the first link of the charge No.1 to be proved and the 2nd link of charge No.1 and charges 2 to 4 not to have been proved and the extreme penalty of "dismissal of the workman from services without notice" for a prtly proved charge is too harsh and shockingly disproportionate and so also unjustified and the findings of the enquiry officer in regard to the charge No.1 are without any basis and perverse and as such, the punishment imposed against the workman is liable to be quashed and set aside and the workman is entitled for reinstatement in service with continuity and all consequential benefits.

6. Per contra, it was submitted by the learned advocate for the Party No.1 that at the time of deciding the preliminary issue regarding the fairness of the departmental enquiry, the contentions raised in respet of the acquittal of the workman in the criminal case and non-payment of subsistence allowance have already been considered by this Tribunal and the findings of the enquiry officer are based on the evidence on record of the enquiry and so also the admission of guilt of the workman and the findings cannot be said to be perverse or without any evidence and the partly proved charge of fraudulently withdrawal of Rs. 70,000 in cash form the current account of M/s. Kalpana Enterprises, Amravati, with Akola Branch is very grave in nature and grave nature of misconduct has been proved against the workman in a properly conducted departmental enquiry and the management of the Bank has lost confidence on the workman and as such, the punishment imposed against the workman of dismissal from service without notice cannot be said to be shockingly disproportionate or harsh to the prove misconduct and for that there is no scope to interfere with the punishment and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the Party No.1 placed reliance on the dicision reported in 2012 IV LLJ-79 (Del.) (Synidcate Bank *Vs.* R.K. Rohilla).

7. On perusal of the record, it is found that the submissions made regarding the non-payment of subsistence allowance and the effect of acquittal of the workman in the criminal case have already been considered at the time of deciding the preliminary issue about the fairness of the departmental enquiry and answered against the workman.

8. So, the question of perversity of the findings of the enquiry officer and proportionality of the punishment are concerned, on perusal of the record and taking into consideration the submissions made by the learned advocates for the parties, it is found that this is not a case of no evidence or that the findings of the enquiry officer are totally against the evidence on record. It is also found that the enquiry officer after assessing the evidence on the record of the enquiry in a precise manner has arrived at the finding. The findings of the enquiry officer are not as such, which cannot be arrived at by any prudent man on the evidence on record. Hence, the findings of the enquiry officer cannnot be said to be perverse.

Grave misconduct of withdrawing an amount of Rs. 70,000 fraudulently from the account of a customer of the bank has been proved against the workman in a properly conducted departmental enquiry. It appears from record that the Party No.1 has lost confidence on the workman. So, the punishment of dismissal from services without notice imposed against the workman cannot be said to be shockingly disproportionate to the grave misconduct proved against his. Hence, there is no scope to interfere with the order of punishment. Hence, it is ordered:—

**ORDER**

The action of the management of UCO Bank through its Regional Manager, Regional Office, Nagpur in dismissing the workman Shri Sanjay S/o. Ramappa Hegu PFM No. 36026 Typist from service *w.e.f.* 30.08.2003 is just and legal. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 764.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ़ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं॰ 82/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2014 को प्राप्त हुआ था।

[सं॰ एल-12011/129/2001-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 764.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Re. No. 82/2001) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 10.02.2014.

[No. L-12011/129/2001-IR(B-II)]
RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/82/2001** Dated: 18.10.2013

Party No. 1 : The Zonal Manager
Central Bank of India, Central Building,
2nd Floor, Kamptee Road,
Nagpur-440001

Party No. 2 : The General Secretary,
Central Bank Staff Union, C/o. Rashtriya
Mill Mazdoor Sangh, Baidyanath Chowk,
Great Nag Road, Nagpur-440003.

**AWARD**

(Dated: 18th October, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their workman, Shri Yogesh Baban Prasad Murai, Rajesh Baban Prasad Murai, Rabindra Devidas Tayade, and Shri Sanjay Laxman Navghare for adjudication, as per letter No. L-12011/129/2001-IR (B-II) dated 10.10.2001, with the following schedule:—

> "Whether the action of the management of Central Bank of India through its Zonal Manager, Nagpur in not absorbing and regularizing the services of Shri Yogesh Baban Prasad Murai, Rajesh Baban Prasad Murai, Rabindra Devidas Tayade as part time Safai Karamchari and Shri Sanjay Laxman Navghare as Sub-staff is legal, proper and justified? If not, what relief the said workmen are entitled to? Whether the management has adopted the disputants against regular vacancies for short spells of time one after the other to perform the duties of Safai Karmacharis/ Sub-staff with a view that none of them was able to complete 240 days in a calendar year? If so, what directions are necessary in the matter?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Central Bank Staff Union", filed the statement of claim on behalf of the four workmen, Shri Yogesh Baban Prasad Murai, Shri Rajesh Baban Prasad Murai, Rabindra Devidas Tayade, and Shri Sanjay Laxman Navghare, ("the workmen" in short) and the management of Central Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workmen as presented by the union in the statement of claim is that it (union) is a registered trade union under the Trade Unions Act, 1926 and Party No. 1 is a Nationalized Bank and is a banking company having branches throughout the country and the branches of the said Bank at Nagpur, Amravati, Akola and Jalgaon regions are under the Control of Zonal Manager, Nagpur and the provisions of Bombay Shops and Establishments Act, 1948 are applicable to Party No. 1 and no recognized union is operating at Party No. 1 and the four workmen worked with Party No. 1 for several years and they were being allowed to work for 60 days each year and they were being terminated and in their places, new persons were being appointed for the same work and the work was available round the year and as the workmen were terminated, the same amounted to retrenchment and even though the work was of regular nature, the appointment of the workmen only for 60 days each year amounted to unfair labour practice and workman, Shri Yogesh Baban Prasad Murai worked for 60 days 63 days, 63 days 63 days, 60 days and 60 days in the years 1993, 1994, 1995, 1996, 1997, 1998 and 1999 respectively at Amravati extension counter and workman, Shri Rajesh Baban Murai worked for 51 days, 13 days, 09 days, 41 days, 17 days, 45 days and 57 days in 1993, 1994, 1995, 1996, 1997, 1998 and 1999 respectively at Amravati extension counter and workman, Shri S.L. Navghare worked for 60 days, 60 days, 60 days, 60 days, 60 days, 54 days, 54 days, 59 days and 50 days in 1986, 1987, 1988, 1989, 1992, 1993, 1995, 1996 and 1997 respectively at Amravati Shankar Bhawan and workman, Shri Ravindra Devidas Tayade worked for 50 days, 58 days, 56 days, 29 days, 02 days, 07 days, 58 days, 52 days, 49 days, 45 days, 46 days, 60 days, 55 days, 58 days and 54 days in 1983, 1984, 1985, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997 respectively at Dotala and Malkapur branches in Akola region and from the above mentioned facts, it will be seen that many of the employees had worked for more than 60 days and their termination was prima facie illegal, improper and unjustified and Party No. 1 discontiuned them to avoid their regularisation and Party No. 1 adopted such practice and played the mischief to avoid the regularisation of the workmen, in view of the fact that, an employee, who completes 240 days of work in a period of 12 months becomes entitle to be regularized as per the provisions of the standing orders and on 01.12.1993, the Party No. 1 issued a circular not to employ and employee on casual or temporary basis for a period beyond 60 days and the said circular itself clearly indicates that Party No. 1 was aware that under the law, an employee, who completes 60 days of work becomes a permanent employee and Party

No. 1 had admitted that the provisions of Bombay Shops and Establishments Act, 1948 are applicable to them and once the same is admitted, it cannot deny the application of standing order and temporary employees are not engaged by Party No. 1 because of temporary increase in work as claimed by the Party No. 1, but such appointments were made to avoid the regularisation and the standing orders shall prevail in case of any conflict between the standing orders and an agreement and the argument entered into of the unions cannot bind the non-members and as the jobs of the employees of Party No. 1 are transferable jobs, the availability of work has to be considered on zonal basis and the workmen were paid less wages than the regular employees and the workmen are entitled for wages for the period during which they were not employed and for regularization in service from the date of their initial appointment and all the consequential benefits.

3. The Party No. 1 in the written statement, denying all the adverse contentions raised in the statement of claim has pleaded *inter alia* that all the four workmen were engaged on daily wages basis as per the requirement of the respective branches on day to day basis and the work taken from them were not work of continuous nature and they were engaged only on the days, the existing staff was on leave or whenever any occasion arose to do some misc. jobs and no appointment orders were issued to them.

It is further pleaded by the Party No. 1 that the union has no authority to raise the dispute as the workmen, who were engaged on contractural basis on daily wages could not have been members of the union and the workmen were engaged on daily wages as per exigencies of the branches purely on stop gap basis, based on requirement, with a clear understanding that their services would be discontinued on cessation of the requirement and their intermittent engagement was necessitated during the absence of the part time safai karmachari deployed for the job and they had not completed 240 days continuous service in the preceding 12 calendar months before their disengagement from work and as such, the provisions of Section 25-H and 25-G of the Act are not applicable to them and the workmen were not engaged by following the prescribed procedure for requirement/regularisation of sub-staff and they were not appointed on any particular sanctioned post and their disengagement from service cannot be construed as retrenchment and the workmen are not entitled to any relief.

4. It is to be mentioned here that after filing of the statement of claim, neither the petitioner nor appeared in the case and contented the same. No evidence was adduced by the union or the workmen in support of the claim.

5. Party No. 1 has examined Shri Vilas Laxman Ailawar, a senior manager as a withness in support of its case. The evidence of Shri Vilas is on affidavit. This witness in his evidence has reiterated the facts mentioned in the written statement. The evidence of the witness has remained unchallenged, as none appeared on behalf of the petitioner to cross-examine him.

6. It is well settled that whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and the must also produces evidence to prove his case and if the workman fails to appear or file written statement or produce evidence, the dispute referred by the government cannot be answered in favour of the workman and he would not be entitled to any relief.

In this case, no evidence has been produced either by the union or the workmen to prove the case of the four workmen. The union (petitioner) and so also, the workmen failed to appear and contest the claim. So, applying the settled principles as mentioned above to the case in hand, it is found that the workmen are not entitled to any relief.

7. At this juncture, it is necessary to mention that even though the reference could have been disposed of in accordance with the findings given in paragraph 6, I think it proper to deal with the merit of the case raised by the petitioner in the statement of claim and to dispose of the reference, in the interest of justice.

8. In this reference, the schedule as given consists of two links. The first link is regarding not absorbing and regularizing of the services of the workmen and the second is about the legality of the action of the Bank in engaging large number of persons on daily wages basis for short periods one after the other.

So far the first link of the schedule of reference regarding the not absorbing and regularizing of the services of the workmen is concerned, it is the case of the workmen that they were engaged for 60 days for several years by the Bank and after working for 60 days each year, their services were terminated, even though the work they were doing was available round the year and the termination amounts to retrenchment and the action of the Bank amounts to unfair labour practice. However, the Party No. 1 has denied such claim and has stated that the workmen were engaged on daily wages basis temporarily as and when required and on day to day basis and there is no question of termination of their services.

It is necessary to mention here that in the statement of claim, on page numbers 5 and 6, the details of the working days of the four workmen year wise have been furnished by the union. On perusal of the same, it is found that the claim of the workmen regarding their working for 60 days every year for several years (As mentioned in the schedule of reference and so also in the statement of claim) is not correct. It is found from the statement of claim that the workmen did not work for 60 days in every year. It is clear from the pleadings made in the statement of claim itself and so also the schedule of reference that none of the four workmen completed 240 days of work in any calendar year including in the preceding 12 calendar months of the alleged date of their termination.

At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court reported in the decision reported in 1996-II-LLJ-820 (Central Bank of India *Vs*. Satyam and others). In the said decision, the Hon'ble Apex Court have held that:—

"The benefit of applicability of section 25-F can be claimed by a workman only if he has been in continuous service for not less than one year as defined in section 25-B. Any other retrenched workman who does not satisfy the requirement of continuous service for not less than one year cannot avail the benefit of section 25-F which prescribes the conditions precedent to retrenchment of workman of this category."

As, in this case, according to their own pleadings, none of the workmen was in continuous service of one year as defined in section 25-B of the Act, i.e. 240 days service in 12 calendr months in a geven year, their termination cannot be said to be retrenchment and they are not entitled for the benefits of section 25-F of the Act. There is also no provision in any law or in the Standing Orders that when a workman is engaged for 60 days on daily wages by an employer each year for some years, the workman is entitled for permanency or regularisation in service by the employer. Hence, the workmen are not entitled to any relief.

9. So far the second link of the reference is concerned, I think it proper to mention about the principles settled by the Hon'ble Apex Court in the decision reported in 2006-II-LLJ-722 (Secretary, State of Karnataka and other Vs. Uma Devi). The Hon'ble Apex Court have held that:—

"Inspite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the constitution or for work in temporary posts or projects that are not needed permanently. This right of the union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are restored to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the union or the State do not have the right to engage persons in various capacities for a duration or until the work is a particular project is completed."

In this case, it is the admitted case that the workmen were engaged on daily wages basis at the time of necessity by the party No. 1. The claim of the party No. 1 is that such engagement was being made during the temporary absence of the permanent members of the sub-staff on leave or otherwise and such work is not available round the year and such claim has not been challenged or denied by the union. Though the union has mentioned the days of work of the workmen year wise in the statement of claim, the period (dates) of such engagement has not been mentioned to show that the engagement of the workmen was one after the other. So, applying the principles enunciated by the Hon'ble Apex Court as mentioned above to this case in hand, it is found that the engagement of some daily wagers by party No. 1 at the time of necessity for a limited period cannot be said to be illegal. However, party No. 1 has to allow the directions given by the Hon'ble Apex Court in the decision reported in 2006-II-LLJ-722 (Supra) in this regard. Hence, it is ordered:—

**ORDER**

The reference is answered in negative. The workmen are not entitled to any relief. The party No. 1 Central Bank of India has to follow the directions given by the Hon'ble Apex Court in the decision reported in 2006 II-LLJ-722 (Secretary, State of Karnataka *Vs*. Uma Devi) in respect of engagement of daily wage workers.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 765.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, कोयम्बटोर स्पिनिंग और वीविंग मिल्स, कोयम्बटोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं

श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 41/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2014 को प्राप्त हुआ था।

[सं॰ एल-42011/05/2012-आई आर (डी यू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 765.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 41/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief General Manager, Coimbatore Spinning & Weaving Mills, Coimbatore and their workmen, which was received by the Central Government on 04.02.2014.

[No. L-42011/05/2012-IR(DU)]

P. K. VENUGOPAL Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Tuesday, the 28th January, 2014

**PRESENT**:

K.P. PRASANNA KUMARI, Presiding Officer

**Industrial Dispute No. 41/2012**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Coimbatore Spinning and Weaving Mills and their workman)

**BETWEEN**

1. The General Secretary
   Coimbatore District Mill Labours Union (CITU)
   Anupparpalayam, Kattoor, Coimbatore

   1st Party/1st Petitioner Union

2. The General Secretary
   Kovai Mandala Panchalai Thozhilalar Sangam
   (NDLF), 32, Perumal Koil Veedhi
   Vilankurichi, Coimbatore.

   1st Party/2nd Petitioner Union

3. The Asstt. General Secretary
   Desiya Panchalai Thozhilalar Sangam
   (INTUC), 1848 Trichy Road
   Ramanathapuram, Coimbatore

   1st Party/3rd Petitioner Union

4. The General Secretary
   Kovai, Periyar Mavatta Dravida Panchalai
   Thozhilal Munnetra Sangam
   162 Pankaja Mill Road, Coimbatore

   1st Party/4th Petitioner Union

AND

The Chief General Manager
Coimbatore Spinning & Weaving Mills
Krishnaswamy Mudaliar Road
Post Box No. 24, Coimbatore

2nd Party/Respondent

**APPEARANCE:**

For the Petitioner Unions :
M/s. Senthilnathan, S. Shanmugasundaram, Advocates

For the 2nd Party/Management :
M/s. T.S. Gopalan & Co., Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment, *vide* its Order No. L-42011/05/2012-IR(DU) dated 06.07.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the NTC Mill Management, Southern Region, Coimbatore not resuming 3 shifts in Coimbatore Spinning and Weaving Mills on par with their Unit of NTC Mills is justified? If not, to what relief the workmen are entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 41/2012 and issued notices to both sides.

3. Four Unions are arrayed as First Party. On receipt of notice number one out of them have entered appearance. The others though received notice, did not appear at all. The Second Party has appeared through its counsel. My predecessor has repeatedly posted the matter for filing Claim Statement. Since the First Party failed to file the statement, he has passed an order against the First Party. Subsequently, S.No. 2 in the array of the First Party has filed IA 42/2013 before this Tribunal and got the matter

restored to file by order dated 29.10.2013. This Court had posted the case for Claim Statement repeatedly even though there was no representation on behalf of the First Party after the ID has been restored to file. Today also, when the matter was called there was no one to represent the First Party. The counsel was also not available.

4. It is clear from the conduct of the First Party that they are not interested in pursuing the dispute. The matter has come before this Tribunal for the first time on 13.08.2012. Even after expiry of more than a year the First Party seems to be not taking any steps to prosecute the case properly .In the absence of any Claim Statement and in the absence of any material, the First Party is not entitled to any relief.

5. The reference is answered against the First Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th January, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined**

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

**Documents Marked**

**On the Petitioner's side**

| Ex. No. | Date | Description |
|---|---|---|
| | Nil | |

**On the Management's side**

| Ex. No. | Date | Description |
|---|---|---|
| | Nil | |

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 766.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलिकॉम डिपार्टमेंट, भारत संचार निगम लिमिटेड, अम्बाला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1354/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2014 को प्राप्त हुआ था।

[सं॰ एल-40012/61/2007-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 766.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1354/2008) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Telecom Department, Bharat Sanchar Nigam Ltd., Ambala and their workman, which was received by the Central Government on 04.02.2014.

[No. L-40012/61/2007-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

**PRESENT:** SRI KWEAL KRISHAN, Presiding Officer

**Case No. I.D. No. 1354/2008**

Registered on 6.2.2008

Smt. Reshma, W/o Sh. Gurmeet Singh,
Village Panjokhra, Ambala (Haryana).

...Petitioner

*Versus*

The General Manager, Telecom Department,
Bharat Sanchar Nigam Ltd., Ambala (Haryana).

...Respondent

**APPEARANCES**

For the Workman : Ex parte.

For the Management : Sh. Anish Babbar Adv.

**AWARD**

(Passed on 17.1.2014)

Central Government *vide* Notification No. L-40012/61/2007 (IR(DU)) Dated 31.1.2008, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Bharat Sanchar Nigam Limited, Ambala in terminating the services of their workman Smt. Reshma Devi *w.e.f.* 9.10.2006, is legal and justified? If not, to what relief the workman is entitled to?"

In response to the notice the workman appeared and submitted statement of claim pleading that she worked as

part-time sweeper with the respondent management for 17 years and her services were regularized as per procedure of the Government of India issued in the year 2001. She has written to the respondent management to convert his services into full time and even served a notice on 4.10.2006. But her services were terminated orally on 9.10.2006. That the respondent management indulge in unfair labour practice. That her termination is against the provisions of the Act and she is liable to be reinstated with all the benefits.

Respondent management filed reply denying the relationship and pleaded that the petitioner was never employed by it.

Workman did not lead any evidence and was proceeded against ex parte *vide* order dated 1.9.2010.

On the other hand the respondent has examined A.L. Bhan in its evidence.

I have heard Sh. Anish Babbar, counsel for the management.

It is the case of the workman that she worked as a part-time sweeper with the respondent for 17 years but no evidence has been led to prove this fact. There is nothing on the file to suggest that she was ever employed by the respondent management and thus the relationship of an employer and employee between the parties is not proved on the file. Being so, it cannot be said that her services were terminated by the respondent management *w.e.f.* 9.10.2006 and she is not entitled to any relief. The reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 767.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रोजेक्ट डायरेक्टर, नेशनल हाइवेज अथॉरिटी ऑफ इंडिया एंड अदर्स, भुबनेश्वर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 01/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2014 को प्राप्त हुआ था।

[सं॰ एल-42025/03/2014-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 767.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Project Director, National Highways Authority of India & Others, Bhubaneswar and their workman, which was received by the Central Government on 04.02.2014.

[No. L-42025/03/2014-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**PRESENT:**

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar,

**INDUSTRIAL DISPUTE CASE NO. 1/2014**

**Date of Passing Order— 22nd January, 2014**

**BETWEEN:**

1. The Project Director,
National Highways Authority of India,
1st Floor, SETU Bhavan, Nayapalli,
Unit-VIII, Bhubaneswar.

2. The Management of Egle Infra. Ltd.,
Tool Plaza, Gangapada, Dist. Khurda.

.....1st Party-Managements.

And

Shri Belalsen Khuntia,
S/o. Late Udayanath Khuntia,
Vill. Balada, Po. Postal,
P.S. Gobindpur, Dist. Cuttack

.....2nd Party-Workman.

**APPEARANCES :**

None ... For the 1st Party-Managements.

Shri Belalsen Khuntia ... For Himself the 2nd Party-Workman

**ORDER**

Case presented today before me. The 2nd Party-workman is present in person. The 1st Party-Management No. 1 and 2 are absent.

The case is at initial stage. However notices have been issued to the 1st Party-Managements. The 2nd Party-workman on 6.1.2014 has moved a petition before this Tribunal that an amicable settlement has been arrived at with the company and the company has agreed to re-appoint him in his previous service. So he is not willing to continue with the case and permission to withdraw the case be granted.

2. I have heard the 2nd Party-workman. He still wants to withdraw the case on the assurance of the company to re-appoint him. I find no legal impediment in allowing the petition. Therefore the petition to withdraw the case is allowed. The 2nd Party-workman is permitted to withdraw the case.

3. The application filed under section 2-A of the Industrial Disputes Act, 1947 is accordingly dismissed as withdrawn.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 768.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविशनल इंजीनियर, टेलीग्राफ, महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/104/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/209/1994-आईआर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 768.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/NGP/104/2004) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Divisional Engineer, Telegraph, Maharashtra and their workman, which was received by the Central Government on 04/02/2014.

[No. L-40012/209/1994-IR (DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/104/2004 Date 03.01.2014

**Party No. 1 :** The Divisional Engineer, Telegraph, Bhandara, Distt. Bhandara, Maharashtra-441904

***Versus***

**Party No. 2 :** Shri Dilip Sondawale, Bagadgang, Ganga Bai Ghat Road, Ward No. 38, Nagpur, 440001.

**AWARD**

(Dated: 3rd January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Telegraph and their workman, Shri Dilip Sondawal, to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur for adjudication, as per letter No. L-40012/209/1994-IR (DU) dated 27.12.1995, with the following schedule:—

> "Whether the action of the management of Divisional Engineer, Telegraph, Bhandara in terminating the services of Shri Dilip Sondawale, *w.e.f.* 16.05.1984 is proper, legal and justified? If not, to what relief the workman is entitled?"

Subsequently, the reference was transferred to this Tribunal for disposal in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Dilip Govindrao Sondawale, ("the workman" in short), filed the statement of claim and the management of Divisional Engineer BSNL, Bhandara ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he had been working as a casual labourer under the supervision and control of the party No. 1 and he worked as a class "D" staff in the office of party no. 1 from 09.05.1983 to 12.05.1984 and his services came to be terminated orally *w.e.f.* 15.05.1984 and his name was sponsored by Employment Exchange and he was provided with work after holding of a interview and his appointment by party No. 1 was against a vacancy and though the work given to him was perennial in nature, he was given artificial breaks and he was not continuously employed, though work was available, in order to deprive him the status and privileges of a permanent employee.

It is further pleaded by the workman that before termination of his services, party No. 1 neither issued one month's notice nor paid one month's pay in lieu of the notice or retrenchment compensation and inspite of his repeated approaches, party No. 1 did not take any action to reinstate him in service and party No. 1 engaged new persons, namely, Shri Anil Ingle, Shri Rajesh Samarth and Shri Rajesh Dhamne after termination of his services and

made them permanent in service and the termination of his services by party No. 1 is in violation of the provisions of section 25-F of the Act and as such, his termination is illegal, improper and contrary to law and he is entitled for reinstatement in services with continuity and full back wages and all monetary benefits of permanent employee with retrospective effect.

3. The party No. 1 in the written statement has pleaded *inter alia* that the reference as well as the claim made by the workman is a stale claim and the workman has claimed the relief of reinstatement with back wages after a period of 25 years and the workman was neither sponsored by the Employment Exchange nor appoint against any regular vacancy and the workman was never engaged by it and Bharat Sanchar Nigarm Limited was erstwhile under the department of Telecommunication till 01.10.2000 and the Department of Telecommunication came into existence in the year 1987, hence the question of engagement of the workman for the period from 09.05.1983 to 12.05.1984 does not arise and such claim is *prima facie* illegal and there is no merit in the claim put-forth by the workman and the workman is not entitled to any relief.

4. In support of his claim, the workman has examined himself as a witness, besides placing reliance on documentary evidence.

One Smt. Ranjana V. Patil has been examined as a witness on behalf of the party No.1

5. In this examination in chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination the workman has admitted that he was working in the office of the Divisional Engineer, Telegraph, Nagpur from 1983 to 1984 and he did not work in the office of the Divisional Engineer, Telegraphs, Bhandara from 09.05.1983 to 12.05.1984 and he has not filed any appointment order showing his appointment in the office of the Divisional Engineer, Telegraphs, Bhandara and he has also not filed any document to show that his name was sponsored by the Employment Exchange and that he was appointed after appearing in a interview and he has not filed any document to show that Shri Anil Ingle, Shri Rajesh Samarth and Shri Rajendra Damne were regularized in service.

6. The evidence of the witness examined by the party No. 1 is also on affidavit and in his evidence, the witness has reiterated the facts mentioned in the written statement. This witness has further stated that the workman worked as a casual labourer in the office of Divisional Engineer (Telegraph) Nagpur from May, 1983 to May, 1984 for a period of $226^{1}/_{2}$ days and he did not work continuously for 240 days and the Divisional Engineer, (Telegraphs) Nagpur had issued a certificate dated 10.01.1985 to the workman in that regard and the workman has filed the said certificate in original on record and as the workman did not work for 240 days, the question of issuing of notice and payment of retrenchment compensation does not arise at all and the workman left the work on his own accord and did not turn up for work and he also did not give his whereabouts to party No. 1 and the workman was never appointed as per the recruitment Rules or against a permanent post.

The evidence of the witness for the party No. 1 has virtually remained unchallenged in the cross examination. This witness has denied the suggestion that the workman worked for 240 days in one calendar year and his termination is illegal.

7. During the course of argument, it was submitted by the learned advocate for the workman that the workman was appointed against a regular vacancy and his name was sponsored by the Employment Exchange and his appointment was made after he was interviewed and though the workman worked for 240 days from 09.05.1983 to 12.05.1984, the mandatory provisions of section 25-F of the Act were not complied with before his termination from services and neither one month's notice nor one month's pay in lieu of the notice nor retrenchment compensation was paid to the workman and as such, the termination is illegal and the workman is entitled to reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party No. 1 that the reference is not maintainable both on the point of Law and facts and the workman was engaged as a casual worker on daily wages basis in the office of the Divisional Engineer (Telegraph) Nagpur, but the divisional Engineer, Nagpur has not been made a party in this reference and as such, the reference is not maintainable. It was further submitted by the learned advocate for the party No. 1 that the claim raised by the workman is quite belated and the claim is raised about 25 years after his alleged termination and there is no explanation for such delay and on that count also the reference is not maintainable and it is clear from the document filed by the workman himself and the unchallenged evidence of the witness for the party No. 1 that the workman worked as a casual daily wager for a period of $226\ ^{1}/_{2}$ days and not for 240 days and he left the job on his own accord, so there was no compliance of the provisions of section 25-F of the Act and the workman has also failed to show that Shri Ingle, Shri Samarth and Shri Damne were juniors to him and they were made permanent in the service and therefore, the reference is liable to be dismissed and the workman is not entitled to any relief.

In support of the submissions, the learned advocate for the party No. 1 placed reliance on the decision reported in 2011(4) Mh. L. J.-33 (Executive Engineer, PHD, Wardha Vs. Namdeo)

9. First of all, I will take up the submission made regarding the delay in raising the dispute.

The Hon'ble High Court in the decision mentioned above have held that:

> "Though the court cannot import the period of Limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and the circumstances of the case, a stale claim must be entertained and the relief should be granted."

The Hon'ble High Court have also set down the principles for the guidance of the court.

Keeping in view the principles as mentioned by the Hon'ble High Court in the above mentioned decision, now, the present case in hand is to be considered.

The alleged termination of the workman was took place in May, 1984 and the dispute was raised by the workman in 1994. So, there is a delay of 10 years in raising the dispute by the workman. it is also found that the party No. 1 has raised the plea of delay in the written statement. The workman though entered the witness box, he did not offer any explanation in regard to the delay in raising the dispute. The workman did not produce any documentary evidence to explain the delay. The reference is therefore, stale and is liable to be rejected on that sole ground.

10. The next submission made by the learned advocate for the party No. 1 is regarding non maintainability of the reference due to raising of the industrial dispute against wrong management and not impleading the right management as a party. it was submitted that the workman has raised the dispute challenging his alleged termination by the Divisional Engineer (Telegraph), Bhandra claiming that he had worked in the office of the D.E, Telegraph, Bhandra from 08.05.1983 to 12.05.1984, but in the year 1983-84, office of the Divisional Engineer, Telegraph, Bhandara was not at all in existence and the said office came into existence in the year 1987 and in fact, the workman was engaged in the office of the Divisional Engineer, Telegraph, Nagpur as casual daily wages worker as and when required and as the dispute has been raised against wrong management and the Divisional Engineer, Telegraph, Nagpur has not been made a party, the reference is not maintainable for non-implication of necessary party and implication of unnecessary party.

The workman has not denied such assertion made by the Party No. 1. Rather, the workman has admitted such facts in his cross-examination. He has categorically admitted that he did not work in the office of the Divisional Engineer, Telegraph, Bhandara, but worked in the office of Divisional Engineer, Nagpur during the period from 08.05.1983 to 12.05.1984. So, it is crystal clear that the dispute was raised against the wrong management and the necessary party i.e. Divisional Engineer, Telegraph, Nagpur has not been made a party in the reference. So, on this ground also, the reference is not maintainable.

11. The last contention raised by the learned advocate for the Party No. 1 is that the engagement of the workman was on casual daily wages basis as and when required in the office of the Divisional Engineer, Telecom, Nagpur and his engagement was never made against any permanent vacancy as per the Recruitment Rules and as the workman did not work for 240 days during the period from 08.05.1983 to 12.05.1984 and left the job on his own volition, without intimating the Party No. 1 regarding his whereabouts, there was no question of compliance of the provisions of Section 25-F of the Act and for availing the benefits of the provisons of Section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days in the preceding 12 calender months of the date of the alleged termination and in this case, as the workman has failed to discharge the said burden of proof, he is not entitled for the benefits of the provisions of Section 25-F of the Act and the workman is not entitled to any relief.

12. It is to be mentioned here that it is settled beyond doubt by the Hon'ble Apex Court in catena of decisions that the initial burden of proof is on workman to show that he had completed 240 days of service and onus of proof does not shift to employer nor is the burden of proof on the workman discharges, merely because employer fails to prove a defence or an alternatie plea of abandonment of service and filing of affidavit of workman to the effect he had worked for 240 days continuously or that the workman had made repeated representation or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden.

13. At this juncture, it is to be mentioned that there is no definite pleading from the side of the workman regarding the exact date of his termination. According to the schedule of reference, the workman was terminated from services on 16.05.1984. According to the statement of claim filed by the workman on 10.04.1996, he was terminated from services on 12.05.1984. In the statement of claim filed on 18.12.2006 by the workman, he has mentioned the date of his termination as 15.05.1984. The workman neither in the statement of claim dated 10.04.1996 nor in the statement of claim filed on 18.12.2006 nor in his evidence has specifically pleaded to have worked for 240 days prceding the date of his alleged termination, even though he has pleaded to have worked continuously from 08.05.1983 to 12.05.1984. Rather in the statement of claim dated 18.12.2006 and in his evidence on affidavit, the workman has pleaded that though the work given to him was of perennial nature, he was given artificial breaks and he was not employed continously in order to deprive him of the status and privilege of a permanent employee.

The workman in support of his claim has filed one experience certificatre issued by the Divisional Engineer Telegraphs, Nagpur. On perusal of the said certificate, it is found that the workman worked as a casual labourer for

226½ days between May, 1983 to May, 1984 against 'D' staff on daily wages basis in the Office of Divisional Engineer Telegraphs, Nagpur. The document produced by the workman himself shows that he did not work for 240 days from May, 1983 to May, 1984. Hence, the provisions of Section 25-F of Act are not applicable to his case. On this ground also, the workman is not entitled to any relief.

14. Though the workman has claimed that after his termination, Party No. 1 engaged three persons in the work and made them permanent in service, no evidence at all has been produced by him to substantiate such claim. Hence, it cannot be said that juniors to the workman were retained and absorbed in service by Party No. 1. Hence, it is ordered:—

**ORDER**

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 769.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल पब्लिक वर्क्स डिपार्टमेंट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 26/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.02.2014 को प्राप्त हुआ था।

[सं॰ एल-42011/16/2008-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 769.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 26/2008) of the Central Government Industrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.P.W.D., and their workman, which was received by the Central Government on 04.02.2014.

[No. L-42011/16/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer.

**ANNEXURE**

**GOVERNMENT OF INDIA, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, ROOM NO.33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI 110 032**

**Present**: Shri Harbansh Kumar Saxena

**ID No. 26/2008**

Sh. Ashok Kumar

*Versus*

C.P.W.D.

**AWARD**

The Central Government in the Ministry of Labour vide notification No L-42011/16/2008-IR(DU) dated 02.06.2008 referred the following Industrial Dispute to this tribunal for the adjudication :—

> "Whether the action of the management of Executive Engineer, CPWD, in terminating/retrenching their workman Shri Ashok Kumar *w.e.f.* 31/12/2000 is legal and justified? If not, to what relief the workman is entitled to?"

On 09.06.2008 reference was received in this tribunal. Which was register as I.D. No. 26/2008 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

**After service of notice workman/claimant filed claim statement on 06.04.2010. Wherein he stated as follows:—**

1. That the appropriate Government vide its order No, L-42011/16/2008-IR(DU) dated 02.06.2008 has referred the instant dispute for adjudication by this Hon'ble Tribunal on the following terms of reference:—

   "Whether the action of the management of Executive Engineer, CPWD, in terminating/ retrenching their workman Shri Ashok Kumar son of Shri Ram Chand, Beldar *w.e.f.* 31.12.2000 is legal and justified? If not, to what relief the workman is entitled to?"

2. That the workman Shri Ashok Kumar son of Shri Ram Chand was working as Beldar on Muster Roll (monthly rated) with effect from and he was subsequently transferred in S.P. Marg, Project. CPWD, 35, S.P, Marg, New Delhi.

3. That the services of the workman are transferable on All India basis when need arises. The workman was not appointed by the S.P. Marg Project Division itself and the workman joined this office on transfer from other unit of CPWD.

4. That the workman is entitled to be regularized in service since 08 October, 1990 as per the directions of DG(W) CPWD and provisions of CPWD Manual Vol. Ill and when the services of the workman were not regularized, the workman approached the Hon'ble CAT Principal Bench, New Delhi for regularization of services through O.A. No. 197/2000.

5. That when the case was pending before the Hon'ble Court, management retrenched the services of the

workman vide their O.M.No. 10(1) /SMPM/200/932, dated 1st December, 2000 without giving retrenchment compensation etc. as per provisions of Industrial Disputes Act, 1947.

6. That the workman had put in more than 240 days of service continuously without any break in each year since 15.12.1986 upto 30.12.2000.

7. That while the services of the workman herein were terminated those junior to him were retained in service.

8. That therefore, the termination of the services of the workman herein is contrary, illegal and contrary to the mandatory provisions of Section 25 (F), (G) and (H) of the Industrial Disputes Act, 1947.

9. That even in O.A. No. 197 of 2000, the Hon'ble CAT had issued directions to CPWD for regularization of services of the workman and pursuant to that directions the department had conducted an interview on 6th December, 2001 of the workman herein and in the said interview the workman got his documents verified by the appropriate authority but despite he has not been regularised in service nor been paid any legal dues on account of retrenchment etc.

10. That the workman is entitled to be treated as having a temporary status as per the Govt. of India's directions and regulations and circular issued on this behalf and his services cannot be terminated in such a casual manner by the management without applying the principle of natural justice.

11. That the temporary status was also granted to the workman as per orders of DOP& T & DG(W), CPWD in this regard. According to this order, the benefits like regularisation, leave, contribution to GPF are also given to the workman and period of service rendered on casual basis is also to be counted for Pensionary benefits.

12. That even at present, vacant, and sanctioned post of Beldar available with the management but the management still refuses to re-instate and regularise the workman herein.

13. That despite his best efforts the workman herein has been unable to secure any alternative employment and the workman is unemployed since the date of the termination of his service and is the verge of starvation.

**PRAYER**

In view of the above facts and circumstance of the instant case, it is, therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to answer the said reference in favour of the workman herein by holding that termination of services of the workman is illegal and contrary to law and the workman herein is entitled to re-instatement with full back wages and all consequent relief and also the regularisation of his services.

**MANAGEMENT FILED WRITTEN STATEMENT AGAINST CLAIM STATEMENT. WHEREIN UNDERHEAD PARAW1SE REPLY TO THE GROUNDS.**

**Parawise Reply**

1. That the contents of paragraph 1 of the application/ statement of claim filed by the workman concerned, referred to as application in the foregoing paragraph of this counter reply, pertains to the matter of record. However, it is submitted that there is no employee/employer relationship between the workman concerned and the respondent management. Therefore the reference order is best in the eyes of law and the same cannot be legally and validity adjudicated upon by this Hon'ble Tribunal as there exists no industrial dispute between the parties.

2. That the contents of paragraph 2 of the application/ statement of claim filed by the workman concerned are misconceived , wrong and such as are denied. The workman concerned was not engaged on monthly rated basis in the office of the respondent management but workman concerned was engaged purely on temporary nature of work along with the extra hand engaged on a particular project. The workman concerned was transferred to the S.P. Marg, Project. But since the project of Gole Market was concluded, he was appointed afresh on he said project. No Transfer letter was ever issued to the workman concerned for joining at S.P. Marg project. The workman concerned is put to strict proof thereof.

3. That the contents of paragraph 3 of the application/ statement of claim filed by the workman concerned are wrong and are denied. The engagement of the workman concerned as for a particular project and after completion of the project the need of the workman concerned Ashok Kumar was not engaged by S.P. Marg division and he joined the S.P. Marg was issued and as such the allegation of the workman concerned is wrong and malafide.

4. That the contents of paragraph 4 of the application/ statement of claim filed by the workman concerned it is submitted that in compliance of the order dated 18.5.2001 passed by the Hon'ble CAT Principal Bench New Delhi in O.A. No. 197 of 2000 case of the workman concerned for regularization of his services as beldar was considered by the competent authority. But the case was not found fit for regularisation and hence it was rejected by the competent authority. Thus there was full and fair consideration on merits regarding the case or regularization of services of the workman concerned.

5. That the contents of paragraph 5 of the application/statement of claim filed by the workman

concerned are wrong and denied. It is wrong to allege that the services of the workman concerned was retrenched in violation of the provisions of Section 25 of the Industrial Dispute Act, 1947, as no retrenchment compensation was given to the workman concerned. It is stated that the services of the workman concerned was retrenched as per office memorandum dated 1.12.2000 which itself states that the workman concerned is given one month's notice on account of retrenchment under Section 25 of the Industrial Dispute Act, 1947 with effect from the date of issue of such order and after expiry of the notice period the services of the workman concerned stand retrenched *w.e.f*. 31.12.2000. Thus the workman concerned was given one month's notice in writing indicating the reasons for retrenchment. On becoming surplus on completion of S.P. Marg project the workman concerned was also paid retrenchment compensation. Thus there was full compliance of Section 25 F (a), (b), (c) of the Industrial Dispute Act ,1947. It is stated that the workman concerned was given retrenchment compensation along with the retrenchment order but he had not accepted the retrenchment benefit as admitted by him under paragraph 15 of his petition filed before the Assistant Labour Commissioner, New Delhi. The workman himself refused to accept the retrenchment benefit. Thus for his default, the answering the Respondents cannot be blamed nor the retrenchment order can be held to be bad on this ground alone.

6. That the contents of paragraph 6 of the application/ statement of claim filed by the workman concerned are wrong and denied. It is also wrong to allege that the retrenchment order is bad in the eyes of law.

7. That the contents of paragraph 7 of the application/ statement of claim filed by the workman concerned are wrong and denied. It is wrong to allege that junior to the workman concerned had been retained. The workman concerned is put to a strict proof thereof. It is stated that all surplus hands engaged at S.P. Project had been retrenched as the said retrenched near completion.

8.That the contents of paragraph 8 of the application/ statement of claim filed by the workman wrong and denied.

9.That the contents of paragraph 9 of the application/ Statement of Claim filed by the workman concerned are not admitted in the form as stated, and as such as denied. Full facts in this regard have been stated in the preceding paragraphs.

10.That contents 10 of the application/statement of claim filed by the workman concerned are wrong and denied, as the workman concerned cannot be treated as having a temporary status as per the guidelines issued by the Government of India. It is wrong to allege that the engagement of the applicant had been terminated in violation of principle of natural justice.

11 .That the contents of paragraph 11 of the applicant/ statement of claim filed by the workman concerned are not admitted.

12.That the contents of paragraph 12 of the application/statement of claim filed by the workman concerned are wrong and denied. There is no vacant and sanctioned post of Beldar Available with the respondent management.

13.That for the reasons stated above the claim deserves to be rejected.

**Workman filed rejoinder wherein he stated as follows:—**

**Reply to the Preliminary Submissions:—**

1. That the content of para No.l to 16 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

2.That the contents of para No.2 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

3.That the contents of para No.3 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

4.That the contents of para No.4 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

5.That the contents of para No.5 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

6.That the contents of para No.6 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim

are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

7.That the contents of para No.7 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

8.That the contents of para No. 8 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

9.That the contents of para No. 9 of the written statement, filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

I0.That the contents of para No.10 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

11.That the contents of para No.11 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

12.That the contents of para No.12 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

13. That the contents of para No.13 of the written statement filed by the management are wrong, false, concocted and frivolous and thus vehemently denied and the content of the concerned para of the statement of claim are reiterated and reaffirmed. The reply in preceding para may be taken as reply herein and are not being repeated for the sake of brevity.

In view of the above it therefore , most respectfully prayed that this Hon'ble Tribunal be please to allow the prayers in statement of claim filed by the workman.

My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination are as follows:—

> ' Whether the action of the management of Executive Engineer, CPWD, in terminating/ retrenching their workman Shri Ashok Kumar w.e.f. 31/12/2000 is legal and justified? If not, to what relief the workman is entitled to?"

Workman in support of his case filled affidavit in his evidence wherein he stated as follows:—

1. That I am the workman in the above noted case and well conversant about the facts and circumstances of the instant case as much competent to swear the present affidavit.

2. That I was appointed by the Management above noted as Beldar on Muster Roll (monthly rated ) w.e.f. 15.12.1986 and I was subsequently transferred to S.P. Marg Project, CPWD, 35, S.P. Marg, New Delhi.

3.That my services are transferable on all India basis when need arises and I was not appointed by the S.P. Marg Project Division itself and I join this office on transfer from other Unit of the Management.

4. That I am entitled to be regularized in service since 08.10.1990 as per the directions of DG(W) CPWD and provisions of CPWD Manual Vol. III.

5.That my services were not regularized and I along with other workman approached the Hon'ble C.A.T. Principal Bench, New Delhi for regularizalion of services through O.A. No. 197/2000.

6.That when the case was pending before the Hon'ble C.A.T., the Management illegally retrenched my services vide O.M. No. 10 (l) SMPM/200/932 dated 01.12.2000 without giving retrenchment compensation etc. as per provisions of Industrial Disputes Act, 1947.

7 That it is pertinent to mention herein that I have put in more than 240 days of services continuously without any breach in each every year since 15.12.1986 upto 30.12.2000 *i.e.* more than 14 years.

8.That *prima-facie*, my services were illegally terminated on 31.12.2000.

9.That it is pertinent to mention herein, that when my services were terminated, those Junior to me were retained in service.

10.That vacant sanctioned posts of Beldar are available with the Management even till today.

11. That I have been unemployed since the illegal termination of my services and have been unable to secure any alternative employment despite my best effort and I am dependent upon my in-laws for survival of my family members.

12. That I am entitled to be reinstated in service with full back wages and all consequential arrear and benefits.

13.That the contents of this affidavit have been explained to me in vernacular language.

In view of the above, it is therefore, most respectfully prayed that his Hon'ble Tribunal be pleased to answer the instant reference in favour of deponent herein.

**Workman tendered his affidavit on 11.04.2012.**
**He was cross-examined on the same day.**
**His cross examination is as follows:—**

I got my name registered in the employment Exchange. 1 never got any appointment letter from the management. I never got any order transferring me anywhere. It is incorrect to suggest that I was given one month's notice by the management before my services were terminated vide office memorandum dated 01.12.2000. I did not get any office memorandum dated 01.12.2000. It is correct to suggest that I was given retrenchment compensation by the management before my services were terminated. It is incorrect to suggest that I have no case against the management.

**Management in support of its case filed affidavit of management witness Sh. R.P. Singh, wherein he stated as follows:—**

1 .That I, being the Deponent in the above matter, am well conversant with the facts and circumstances of the instant case and as such competent to swear this affidavit.

2. That the deponent says that the workman was engaged in CPWD on purely temporary/need basis on a practical project and the engagement of the workman concerned was a purely temporary nature for a particular project.

3.That deponent says that there is already regular and sufficient staff with the respondent management to carry out their work but wherever new project is started by the CPWD extra/additional hands are engaged purely on temporary basis to meet the sporadic need of the occasion on the particular project. The deponent further says that this engagement is purely of temporary and casual nature for carrying out the need of extra hands on a particular project.

4.That deponent says what when a particular period is over and whenever new projects are stated, preference in engagement of casual labour is given to those who had sincerely worked on earlier projects but the subsequent engagement has not connection of any nature whatsoever with the earlier engagement as the engagement is for a particular project having no sequence or connection with the earlier project definite process of appointment after due notification of the vacancies, the names of appropriate candidates are called from the employment exchange. The deponent further says that appointment authority who issues appointment letters to the employee concerned appointment him on probation for a particular period and on successful completion of probation period, they are issued confirmation letters confirming them on service.

5. That deponent says that there is no vacancy of permanent nature is available in the office of the respondent to accommodate the workman concerned and if the workman concerned is reinstated and absorbed in service it would create a great labour unrest and disharmony in the office of the respondent.

6. That deponent says that the present workman concerned was also engaged on a particular project and after completion of one project, he was given the preference in engagement on a new project on sympathetic consideration that he had already worked on any earlier project.

7. That the workman concerned was neither appointed on a substantive vacancy on permanent basis nor was his name called for from the Employment Exchange in as much as he was not ( issued any appointment letter as his employment was purely of temporary basis to fulfill a particular need on a project and after the project is over the need also ceases to exist.

8. That deponent further says that engagement of the workman concerned in the department was after imposition of ban as engagement of casual labour and the said ban has not been lifted so far, therefore, the engagement of the workman concerned cannot be termed as casual labour as engagement was purely of temporary nature on need basis of particular project.

9. That deponent says that Ministry of Finance had further imposed a ban vide office memorandum dated 05.08.1999 even for fill up vacant posts thus, in view of this aforesaid office memorandum, the workman concerned cannot be retained or regularized in the services.

10. That deponent further says that there is no vacancy in the category of Beldar to accommodate the workman concerned.

11. That deponent says in compliance of the order dated 18.05.2001 passed by the CAT New Delhi in O.A. No. 197 of 2000, the case of this workman concerned was considered by the competent authority for regularization but the case of the workman concerned not being found fit was rejected after due consideration and vide office memorandum dated 20.08.2002, the workman concerned was also intimated accordingly.

12. That deponent says that vide office memorandum dated 01.12.2000, the services of the workman concerned was retrenchment after giving one months notice in compliance of Section 25 F of Industrial Dispute Act of 1947 as S.P. MARG PROJECT was nearing completion and the services of the workman concerned was not required on S.P. Marg Project and he had become surplus. Upon careful examination of the circumstances, the competent authority had decided to retrench the services of the workman concerned after giving benefit as per the rules.

13. That dispensing of the service of the workman concerned w.e.f. 31.12.2000 as per office memorandum dated 01.12.2000 is absolutely valid and legal.

14. That deponent says that there is no employee/ employer relationship between the workman concerned and the respondent management.

15. That the deponent says that the workman concerned was not engaged on monthly rated basis in the office of the respondent management but the workman concerned was engaged purely on temporary nature of work along with extra hand engaged on a particular project. The deponent further says that the workman was engaged to the S.P. Marg Project. No transfer letter was ever issued to the workman.

16. That deponent says that engagement of the workman was for a particular project and after completion of the project, the need of the workman was not engaged by the S.P. Marg division.

17.That the services of the workman was retrenchment as per office memorandum dated 01.12.2000 which itself states that the workman concerned is given on month's notice on account of retrenchment under section 25 F of the I.D. Act 1947. The workman was given one month's notice in writing indicating the reasons for retrenchment.

18.That the deponent says that there is no vacant and sanctioned post of Beldar available with the respondent management.

19. That the deponent says that the workman has filed false and frivolous petition just only to harass the management and in order to extract undue money. The petition of the workman has no merit and is liable to be dismissed.

20 .That it is my true statement.

**He was cross-examined on 14/06/2013 by A/R for the Claimant.**

**His cross examination is as follows:—**

Claimant was working with the management as Beldar. Claimant has worked with the management for 14 years. It is also correct that in every calendar year, claimant has worked for more than 240 days. Notice was served to the claimant before his retrenchment. Retrenchment compensation was also paid to him. A sum of Rs. 23112.00 was paid to the claimant as retrenchment compensation. Claimant was working in a temporary capacity. Since no work was available for the claimant, his services were retrenched after paying retrenchment compensation. It is incorrect that action of the management was illegal.

It is correct that service of the claimant were retrenched on 30.12.2000. Ques. Please tell as to how many persons were recruited as Beldar by the management in the year 2001?

Ans. In my Division there was no recruitment as Beldar, I cannot say whether any person was recruited as beldar by the management in other Divisions. No person was recruited as beldar in my Division in the year 2002. Same is my reply in respect of year 2003. Job of the claimant was not transferable. Vol. on completion of one project, the management can sent the claimant on another project also. It is incorrect that on 15.12.1986, the claimant was transferred to a project at S.P. Marg, New Delhi.

In the light of contentions and counter contentions. I perused the pleadings of the parties contained in claim statement, written statement, and Rejoinder & their respective evidence, as well as settled law on the point.

Perusal of evidence on record shows that Workman /Claimants Sh. Ashok Kumar was engaged as Beldar on 15.12.1986 by C.P.W.D (Here in after referred to as the management) , thereafter he continuously served the management till Dec. 31.2000, the date when his service was discontinued aggrieved by the said order, he raised the demand of reinstatement of his services, which was not conceded too. He raised an Industrial Dispute before the conciliation officer, but conciliation proceeding ended in failure. On consideration of failure report, submitted by the conciliation officer, the appropriate government referred the dispute to this Tribunal Vide Oder Notification No. L-42011/16/2008 IR(DU) dated 02.06.2008. Claim Statement was filed by Sh. Ashok Kumar wherein he stated along with other fact that he was working with the management as Muster Roll Beldar since 15.12.1986 up to 30.12.2000. He was entitled for regularization of his service but he was not regularized. When he protested his services were dispensed with Vide Order Dated 31.12.2000 though his services was terminated yet. His juniors to him were retained in service. Act of terminating of his service is violated of statutory provision, sections 25 F, 25 G, 25 H of Industrial Dispute Act 1947.

Management filed Written Statement against aforesaid claim statement through which he prayed that claim statement is liable to dismiss and claimant is not entitled to relief of reinstatement as claimed by him. On the basis of averment made in the Written Statement.

Claimant in reply to written statement filed his rejoinder through which he retreats facts pleaded by him in his Claim Statement.

To substantiate his claim, the claimant filed his affidavit in evidence on 14/11/2011. He was cross examined in detail on behalf of the management. Shri Santosh Kumar Mishra, tendered his affidavit dated 11.04.2012 as evidence on behalf of the management. He was cross-examined on behalf of the claimant. No other witness was examined by either of the parties.

I have heard the arguments of Ld. A/R's for the parties. I perused the pleadings and evidence of the parties including settled law and relevant provision of concerned law on the points.

**My findings on issues involved in the controversies are as follows:—**

Claimant swears in his affidavit that he was appointed as Beldar on Muster roll on 15.12.1986. Subsequently he was transferred to S.P. Marg Project, CPWD, 35, S.P. Marg, New Delhi. He was regular employee and entitled for temporary status as well as regularization in services of the management. He along with other workmen approached the Hon'ble CAT Principal Bench New Delhi for regularization of services O.A. No. 197/2000.

When the case was pending before the management illegally retrenched his services vide (O.M. No.10 (1) SMPM/ 200/932 dated 01.12.2000 without giving retrenchment compensation etc. as per provisions of Industrial Dispute Act, 1947. In his affidavit Shri R.P. Singh , Executive Engineer, Construction Division XIIth, CPWD . I.P. Bhawan N.D, on S.A. Facts as detailed in Written Statement of the management. During his cross-examination he does not dispute that workman worked for about 14 years and in every calendar year he rendered 240 days continuous service. However, he stated that no work is available for the claimant. Hence, his services were retrenched after paying him retrenchment compensation.He could not dispute that the project continued even after discontinuation of the services of the claimant.

Whether relationship of employer and employee, existed between the parties? For an answer to this question, it is to be appreciated as to how a contract of service is entered into. Relationship of employer and employee is constituted by a contract express or implied between the employer and employee. A contract of service is one in which a person undertakes to serve another and to obey. Reasonable orders within the sphere of the duty undertaken, A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there, has in fact, been employment of the kind usually performed by the employee. Any such inference, however, is open to the rebuttal as by showing that relation between the parties concerned was on charitable footing or the parties were relations or partners or were directors of a limited company, which employ no staff. While employees, at the time, when his services were engaged, need not have known to identity of his employer, there must have been some act or contract by which parties recognize one another a master and servant.

To establish relationship of employer and employee claimant/workman examined himself in his oral evidence. He was cross-examined by Sh. Santosh Kumar Mishra A/R for the management but nothing could be extracted out which may disprove the relationship of employer and employee among management & claimant . On the other hand MW1 Shri. R.P. Singh concedes in his testimony that claimant rendered about 14 years continuous service with the management. Consequently, facts unfolded by Shri. Ashok Kumar and Shri R.P. Singh are sufficient to conclude that the claimant was engaged as muster roll Beldar by the management on 15.12.1986 to 30.12.2000. He rendered his continuous service for more than 240 days in each calendar year. When the claimant was engaged as Muster roll Beldar, on whom temporary status was accorded, it does not lie in the mouth of the management that there was no relationship of employer and employee between the parties. Thus claimant has established through his credible and reliable evidence that he was an employee of the management. As projected by the parties, services of claimant were dispensed with on 31.12.2000. Shri . R.P. Singh unfolds in his affidavit exhibit MW1/A that engagement of the workman was for a particular project and after completion of the project, the need of the workman was not engaged by the S.P. Marg, project, CPWD,35, New Delhi.

That seniors of the workman was retrenched as per office memorandum dated 1.12.2000. Service of one month notice is also not disputed by the claimant .Thus it makes crystal clear that claimant was bidden farewell by the management on 31.12.2000.

Whether termination of services of Shri Ashok Kumar amounts to retrenchment? For an answer, definition of the term is to be construed. Clause (oo) of Section 2 of the Industrial Disputes Act, 1947 (in short the Act) defines retrenchment. For sake of convenience, the said definition is as extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt) Ltd. [1979 (1) LJJ 1] and Mahabir [1979 (II) LJJ 363].

Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of Section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operand to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab, I.C. 100) and Balbir Singh [1990 (l) LJJ. 443]. On review of law laid by the Apex Court and various High Courts, a Single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab, I.C 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of Section 2 of the Act:

"(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under Section 2(oo)(bb),

(iii) that the provisions of Section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of Section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of Sections 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of Section 2(oo] of the Act, in C.M.Venugopal [1994 (1) LJJ 597]. As per fact of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

In Morinda Co-operative Sugar Mills Ltd. (1996 Lab, I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen

worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

Above legal position was reiterated by the Apex Court in Anil Bapuro Kanase [1997 (10) S.C.C. 599] wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

In Harmohinder Singh (2001 (5) S.C.C. 540) an employee was appointed as a salesman by kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, *inter alia,* provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in Uptron India Ltd, [1998 (6) S.C.C. 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

In Batala Coop. Sugar Mills Ltd. [2005 (8) S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapuro Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court cannot be maintained.

The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extend from time to time and finally dispensed with in June 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2(oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar [2003 (II) LJJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand Samal were found to be relating to fixed term of appointment.

In BSES Yamuna Power Ltd, (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High Court of Delhi has observed thus:

"...In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment."

Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M.Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of the claimant.

At the cost of repetition, it is said that the claimant was not appointed against S.P. Marg project for specified period. No evidence has come over the record that services of the claimant came to an end as a result of non renewal of the contract of employment on its expiry or it were terminated as per stipulation contained in the contract of employment. For application of the provisions of sub-clause (bb) of clause (oo) of Section 2 of the Act, the management is under an obligation to show that the engagement of the claimant was not for casual works on daily wages. Non renewal of contract of employment presupposes an existing contract of employment which is not renewed. Even in respect of a daily wager a contract of employment may exist, such contract being from day to day. The position, however, would be different since such contract is in reality, camouflage for a more sustaining nature of arrangement, but the mode of daily wager is adopted so as to avoid rigors of the Act. Therefore, it is concluded that sub-clause (bb) of clause (oo) of section 2 of the Act does not contemplate to cover contract such as of a daily wager and is rather intended to cover more general clause of contracts where a regular contract of employment is entered into and the termination of service is because of non renewal of the contract. Therefore, sub-clause (bb) of clause (oo) of section 2 of the Act cannot be pressed into service by the management to espouse its case. In view of all these facts, it is clear that management cannot avail benefit of sub-clause (bb) of Clause (oo) of Section 2 of the Act and termination of the service of the claimant amounts to retrenchment.

In his testimony claimant projects that retrenchment compensation was not paid to him. Shri R.P. Singh speaks on the same lines in his affidavit Ex.MW-1/A. For sake of convenience paragraph 18 of his affidavit reads thus:—

"That the services of the workman was retrenched as par office memorandum dated 1.12.2000 which itself states that the workman concerned is given one month's notice on account of retrenchment under section 25F of the I.D. Act, 1947. The workman was given one month's notice in writing indicating reasons for retrenchment."

As indicated above, Shri R.P. Singh simply spells that one months notice was given to the claimant. He nowhere unfolds that retrenchment compensation was paid to him. On that issue the claimant is much vocal when he swears in his affidavit that he was not given retrenchment compensation. Section 25F of the Act postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment namely:— (a) one month's notice in writing indicating reasons for retrenchment or wages in lieu of such notice, (b) payment of compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months, and (c) notice to the appropriate Government in the prescribed manner. Negative language used in section 25F of the Act imposes, a mandatory duty on the employer which is a condition precedent to retrenchment of workman. Contravention of mandatory requirement of the section would invalidate retrenchment and render it void ab initio. When these mandatory requirements are not complied with, the retrenchment of the claimant cannot be upheld. Consequently I am constrained to conclude that retrenchment of the claimant is violative of the provision of section 25F of the Act. Reference can be made to the precedents in Auro Engineering (Pvt.) Ltd., Nasik (1992 Lab. l.C. 1364) and Ollur Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LJJ 174].

Claimant claims regularization of his services with the management. It is not his case that at the time of his engagement recruitment rules were followed. No evidence

was brought over the record to show that public advertisement was given, inviting public at large to compete. In his affidavit the claimant made a bald statement to the effect that his name was sponsored by the Employment Exchange. He could not substantiate this fact by any documentary evidence. Though he tried to assert that an appointment letter was issued in his name, but this claim also proved to be wrong. He could not produce his appointment letter before the Tribunal. It is apparent that the claimant made wrong statement on counts. He failed to establish that he was appointed as a Beldar in consonance with the recruitment rules. There is a complete vacuum of evidence that the claimant took test and faced interview for his selection. It has not been projected by him that at the time of his selection norms of reservation policies were followed. It has also not been shown that candidates of minor communities were also considered and appointed, when he was selected for appointment with the management. Therefore, out of the facts projected by the claimant, it nowhere comes over the record that procedure prescribed for appointment to the post of a regular Beldar was followed.

A "seasional workman" is engaged in a job which lasts during a particular season only, while a temporary workman may be engaged either for a work of temporary or casual nature or temporarily for work of a permanent nature, but a permanent workman is one who is engaged in a work of permanent nature only. The distinction between permanent workman engaged on a work of permanent nature and a temporary workman engaged on a work of permanent nature is, in fact, that a temporary workman is engaged to fill in a temporary need of extra hands of permanent jobs. Thus when a workman is engaged on a work of permanent nature which lasts throughout the year, it is expected that he would continue there permanently unless he is engaged to fill in a temporary need. In other words a workman is entitled to expect permanency of his service. Law to this effect was laid by the Apex Court in Jaswant Sugar Mills [1961 (l)LLJ 649].

Some casual workmen employed in a Canteen, raised demand of permanency in service. The Tribunal directed that from particular date they should be treated as probationer and appointed in permanent vacancy without going into the question as to whether more than permanent workmen were necessary to be appointed in the canteen, over and above the existing permanent strength to justify the making of the casual workman as permanent, where they were working. Neither there was any permanent vacancy in existence nor the Tribunal directed for creation of new posts. When the matter reached the Apex Court, it was announced that the Tribunal was not justified in making these directions. The workman may be made permanent only against permanent vacancies and not otherwise, announced the Apex Court in Hindustan Aeronautics Limited *Vs*. their workmen [1975 (II) LLJ 336].

In Uma Devi (2006(4) SCC I) the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or *ad hoc* capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent— the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all *ad-hoc*, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent". Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was ruled thus.
>
> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the *inter se* merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing

advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under article 16 of the Constitution."

In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized.

In Indian drugs Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court retreated the law laid down in Uma Devi's case (supra) and announced that the rules of recruitment cannot be relaxed and court cannot direct regularization of temporary employees de hors the rules nor can it direct continuation of service of a temporary employee whether with a casual, *Ad-hoc* or daily rated employee or payment of regular salaries to them. In Daya Nand [2008 (10) SCC 1] the Apex Court ruled that menace of illegal and back door appointment compels the court to rethink and in large number of subsequent portions the court declared to entertain the claim of *Ad-hoc* and temporary employees for regularization of service saying that theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It was ruled therein that claim of the claimants for regularization of their job cannot be considered.

Now it would be considered whether the claimant could show that he was engaged on daily wage basis in pursuance of recruitment rules applicable; to the management. He had adopted a posture of silence on this issue. On the other hand Shri R.P Singh was candid enough to say that the claimant was engaged de hors the rules. It is evident that engagement of the claimant was not in pursuance of the rules of recruitment. In that situation it cannot be said that his recruitment was irregular, which can be regularized. In Uma Devi's case (Supra) Apex court dealt with appointment of casual employees on two standards (1) irregular appointment (2) illegal appointment. For irregular appointment where the appointee have rendered 10 years or more service in a duly sanctioned post the State was commanded to take one time measure to regularize there services but in case of illegal appointee the court concluded that they have no right to continue in the service. The claimant being an illegal appointee cannot claim a right to continue in service of the management. Therefore I do not find it to be a case for reinstatement of the claimant in service.

Services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of reinstatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workmen" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper.

The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of compensation, which may be awarded to the claimant. In S.S.Shetty [1957 (II) LJJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits Including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future ....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con."

A Divisional Bench of the Patna High Court in B.Choudhary (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable; (ii) compensation for deprivation of the job with future prospect and obtainability of alternative

employment; (iii) employee's age; (iv) Length of service in the establishment; (v) capacity of the employer to pay and the nature of the employer's business; (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. LC1887).

In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LJJ 398] the amount of compensation equivalent to two years salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LJJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal [1988 Lab.I.C,380], the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh [1993 Lab.l.C. 44] the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor [1984 (11) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19] a sum of Rs, 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab.IC.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V. V. Rao (1991 Lab.l.C.1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

In the lighl of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr. Vs. Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr. AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded". In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic".

As referred above the Claimant /Workman rendered 240 days continuous service for 14 consecutive calendar years as a Casual Worker. On 15.12.86 the claimant /workman was about 26 years of age. After rendering service with the management he completed the age of about 40 years. Now his age is about 54 years. He is admittedly working for gain since his alleged retrenchment. As he has become overage so he cannot get a job in any public sector undertaking or government department. His services with the management were found to be good and satisfactory. Considering all these facts and the circumstance that retrenchment compensation was not paid to him. I am of considered view that a compensation of Rs. 50,000 (Fifty thousand only) , in lieu of reinstatement in service, would meet the ends of the justice.

Reference is accordingly decided in favour of Claimant/Workman and against Management of CPWD is directed to pay the aforesaid compensation to Claimant/Workman after expiry of period of available remedy against this award.

Award is accordingly passed.

Dated : 9.1.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 फरवरी, 2014

**का॰आ॰ 770.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ पोस्ट मास्टर जनरल, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायाल-2, दिल्ली के पंचाट (संदर्भ संख्या 62/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/02/2014 को प्राप्त हुआ था।

[सं. एल-40011/35/2007-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 11th February, 2014

**S.O. 770.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 62/2007) of the Central Government Industrial Tribunal/Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Post Master General, New Delhi and their workman, which was received by the Central Government on 04/02/2014.

[No. L-40011/35/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI**

**Present :** Shri Harbansh Kumar Saxena

**ID. No. 62/07**

Sh. Gajendra Singh

**Versus**

Chief Post Master General

**AWARD**

The Central Government in the Ministry of Labour *vide* notification No L-40011/35/2007-IR(DU) dated 22.10.2007 referred the following Industrial Dispute to this tribunal for the adjudication :—

> "Whether the action of the management of the Chief Master General, Dehradun, in denying employment on compassionate ground to Shri Gajender Singh S/o Late Shri Gabel Singh, is legal and justified? If not, what relief the claimant is entitled to?"

On 26/10/2007 reference was received in this tribunal. Which was register as I.D. No. 62/2007 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Shri Gajendra Singh through Shri Vijendra, State Secretary, Bhartiya Mazdoor Sangh, Uttrakhand filed claim statement on 18.12.2007 in this tribunal. Wherein grounds were taken as follows:—

1. That Industrial Dispute u/s 36(1)(B). Industrial Dispute Act has been filed for providing seeking job for Gajendra Singh S/o Late Shri Gabel Singh on die- in-heiriness grounds.

2. Late Shri Gabel Singh permanent Group-D employee, Vikas Nagar, Post Office died suddenly on 22.12.1994 during his service tenure.

3. After death of Late Shri Gabel Singh his nominee wife Smt. Lalita Devi also expired after about 6 months on 24.06.1995.

4. That on the date of death of Late Shri Gabel Singh & his wife Late Smt. Lalita Devi their dependents Gajendra Singh (Son) aged about 12 years, Surender Singh (Son) aged about 6 years, Kumari Guddi (Daughter) aged about 4 years all were minors.

5. That Smt. Lalita Devi wife of Late Shri Gabel Singh, moved an application seeking job but before any order passed by department she expired on 24.06.1995. So she couldn't get job.

6. All dependents of Late Shri Gabel Singh were minors having 1.189 hectares of land and one Kacha house which is registered in the name of his uncle. In which their share is included. In such situation maintenance of dependents is difficult.

7. That additional district Judge Dehradun, decided miscellaneous case No. 84/96, Through order he appointed Shupa Singh, Guardian of the aforesaid three minors of Late Shri Gabel Singh. Who is looking after them till now.

8. That after becoming major Shri Gajendra Singh out of aforesaid minors applied for job on 04.09.2002. On die-in-heiriness ground.

9. That Post Office Department of Dehradun, through its Letter No. B-2/01, dated 25.09.2003 called upon Gajendra to furnish information contain in letter. Which was furnished by Shri Gajendra Singh to the Post Office.

10. That pension provided to minors by Post Office department is not sufficient. Minors are suffering from natural calamity.

11. That Shri Gajendra Singh applied in writing before department that he is ready to serve other that department of Post Office but department paid no attention.

12. That at the time of death of Late Shri Gabel Singh Quota of dependents of deceased in appointment was 100%. Hence, non-providing job to dependent is unjustified and illegal.

13. That applicant Shri Gajendra Singh is entitled for job in department.

On the basis of aforesaid averments that at time of death of Late Shri Gabel Singh applicant Sh. Gajendra Singh

prayed for job in department. On the basis of his educational qualification.

**Senior Superintendent of Post Office of Dehradun on 17.11.08 filed Written Statement. Wherein he stated as follows :—**

1. That Sh. Gajendra Singh S/o Late Sh. Gabel Singh filed Industrial Dispute U/s 36(1)(B) Industrial Dispute Act 1947 for seeking job as an dependent of deceased. Claimant is not workman. Hence, answering dependent has objection against institution of aforesaid of Industrial Dispute on the ground the Section 36 Industrial Dispute Act, 1947 is applicable where there is dispute between workman and his employer. According to provision of Section 2-(S) Industrial Dispute Act Sh. Gajendra Singh Claimant is not workman. In this background claimant is not entitled to file Industrial Dispute for seeking job through Daak Karamchari Sangh Postman Avam Chaturth Shredi Dehradun Prakhand.

2. Statement is true.

3. No comment is required.

4. No comment is required.

5. Claimant himself admitted that death of Smt. Lalita Devi occurred on 24/06/1995. So, her case for seeking job was not considered and in para 4 he himself stated that other dependent family members were minors who cannot be entitled for appointment. In those Sh. Gajendra Singh was included.

6. No comment is required.

7. No comment is required.

8. No comment is required.

9. Contents are admitted.

10. No comment is required.

11. Claimant Sh. Gajendra Singh applied in department for his appointment for the post of departmental Postman. On which Selection Committee considered on 15.12.2003. His name was not approved on the grounds mentioned in Para-9. In addition to it there is no provision to consider his name for additional departmental post for the same.

12. Contention is not admitted because after death of Sh. Gabel Singh and his wife all dependents members were minors. Who were not eligible for employment? Again claimant Sh. Gajendra Singh in 2002 applied for job after becoming major as he stated in Para 4 and 8. So, his statement that after death of Late Sh. Gabel Singh non providing job to 100% dependents is not logical. However, department exhaust his process according to rules.

13. Circle selection committee SPMG Karyalaya Dehradun has already considered the application of Claimant for seeking job on 15.12.2003 and case of applicant could not be approved because such appointment of Group D and C are considered for 5% of total existing vacancies. Such principle has been laid down by Hon'ble Supreme Court on 5.04.1994 in case of Umay Kumar Nagpal *V/s.* Haryana State [J.T. 1994(3) S.C. 525]. Thus claimant is not entitled for seeking job in department nor dependent can appoint him nor claimant can be provided any claim.

**Claimant on 24/03/2008 filed Rejoinder. Wherein he stated as follows:—**

1. Contents of Para No. 1 of Written Statement not admitted because dispute is related to appointment which has been raised through Union. Hence, Claimant is not required to be workman.

2. Contents of Para No. 2, 3 and 4 of Written Statement require no comments.

3. Contents of Para No. 5 of Written Statement require no comments.

4. Contents of Para No. 6 ,7 and 8 of written Statement require no comments.

5. Contents of Para No. 9 are partly admitted and rest are denied.

6. Contents of Para No. 10 of Written Statement require no comments.

7. Contents of Para No. 11 of Written Statement are not admitted because of untrue facts.

8. Contents of Para No. 12 of Written Statement is not admitted due to untrue facts.

9. Contents of Para No. 13 of Written Statement is not admitted due to untrue facts.

10. Summary history annexed with written statement is partly admitted remaining is not admitted due to untrue facts.

On the basis of aforesaid contents prayer for passing award was made.

**My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:—**

"Whether the action of the management of the Chief Master General, Dehradun, in denying employment on compassionate ground to Shri Gajender Singh S/o Late Shri Gabel Singh, is legal and justified? If not, what relief the claimant is entitled to?"

**Workman in support of his case filed affidavit of Sh. Gajendra Singh in his evidence, Wherein he stated as follows:—**

1. That my father Late Sh. Gabel Singh was permanent Group-D employee in Vikas Nagar, Post Office, who died suddenly on 22.12.1994.

2. That my mother Late Smt. Lalita Devi applied for the job but after 6 months she also expired on 24.06.95 . At that time I Gajendra Singh, my brother Surender Singh and sister Guddi, all were minors.

3. That I have 1.189 hectare land and 1 kacha makan which is in name of my Uncle. In which I have a share.

4. That district judge Dehradun, appointed guardian to my uncle Sh. Shupa Singh for looking after and maintenance for the we minors. Since, than he is looking after.

5. That after becoming major I applied for job on 4/9/2002 in the department which was allowed by department but job has not been provided.

6. That I myself, my brother and sister are prosecuting studies. Hence, pension provided to us is not sufficient for education and maintenance to us. There is no other source of Income to us.

7. That after rejection of my application I moved an application before Bhartiya Mazdoor Sangh and prayed to institute a dispute to seek justice.

8. That is therefore prayed I shall be provided job in department as per my education qualification.

**On 10.5.2010 affidavit of Workman was tendered & he was cross-examined on same day. His cross examination-in-chief and cross-examination as follows:—**

MW1, Mr. Gajendra Singh S/o Late Shri Gabel Singh, aged 26 years, (Date of Birth 08 April, 1984), unemployed, r/o Village: Chitar, PO: Gangroo, Dist. Dehradun, Uttrakhand:

On SA:

I tender in evidence my affidavit, which is Exb. WW1/A. It is in Hindi. The same is correct. It may be read in evidence in my case.

XXX by Ms. Meenakshi Aggarwal, A/R of the management:

It is correct that I received letter dated 28.01.2004 copy of which is Exb. WW/M1. It is incorrect to suggest that I am not entitled to appointment on compassionate grounds as has been claimed by me this case.

**Management in support of his case filed affidavit in his evidence wherein he stated as follows:—**

1. That the deponent is posted as Asstt. Superintendent of Post Offices, Dehradun, Uttrakhand, as such he well conversant with the facts of the case therefore competent swear this affidavit.

2. I say that the present claim of the claimant is not maintainable as no Industrial Dispute ever arose between the claimant and management since the claimant has never been in the employment of the management at any point of time.

3. That in the present dispute, the claimant applied for a compassionate appointment and the case was considered by Circle Relaxation Committee for recruitment but same was rejected on the plea that only one vacancy was available and there was no provision of wait list. The other cases were not considered on merit. The copy of report of CRC is Exb. MW1/1.

4. That as per Office Memorandum No. 14014/23/99 EsTT(D) dated 03.12.1999 of Department of Personnel & Training , the Nodal Ministry which administers the scheme for such appointment, the committee meant for considering the compassionate appointment cases should take into account of availability of vacancy for such appointment and it should be recommended appointment on compassionate grounds only in a real deserving case and only if a vacancy meant for appointment on compassionate grounds will be available with a year that to within the ceiling of 5% of direct recruitment quota.

5. That the deponent submitted that as per the policy of Govt. on compassionate appointment, the same can be provided only to fill upto 5% of vacancies that arises for direct recruitment. However, the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

6. That in the present case the name of claimant was duly considered and rejected due to non-availability of vacancy out of 5% quota. Hence the claim of the claimant has no merit and is liable to be dismissed.

On 28.5.2013 affidavit of MW1 Sh. R.S. Khati, Asstt. Superintendent Post Office, Dehradun Uttrakhand, was tendered by management. Opportunity to cross-examination was not availed on behalf of workman than it was marked Nil.

Management closed its evidence.

I have heard the arguments on behalf of workman as none on behalf of management present to argue the case. I fixed 23.01.14 for Award. I afforded opportunity to management to argue before date of Award.

Inspite of opportunity Ld. A/R for the management not appeared upto 1:30 of 23.1.2014 to argue the case on behalf of management nor any adjournment has been sought on behalf of management in this old ID. No. 62/07.

In these circumstances I am proceeding to decide the case on the basis of arguments of Ld. A/R for the workman.

In the light of contentions of Ld. A/R for the workmen I perused the pleadings of Claim Statement, Written Statement, and Rejoinder as well as evidence adduced on behalf of the parties.

Questions of Determinations mentioned in schedule of reference are as follows:—

> "Whether the action of the management of the Chief Post Master General, Dehradun, in denying employment on compassionate ground to Shri Gajender Singh S/o Late Shri Gabel Singh, is legal and justified? If not, what relief the claimant is entitled to?"

It is relevant to mention here that when reference is made by Central Government for adjudication of reference then there is presumption that it is a Industrial Dispute which was referred for adjudication to Industrial Tribunal. This principle has been laid down by their Lord Ship of Hon'ble Supreme Court in case of workmen *V/s.* Hindustan Lever Ltd. (1984)4 SCC 392 and in case of SK Verma *V/s.* Mahesh Chand (1983)4 SCC 214.

Principle laid down by Hon'ble Supreme Court is binding to all subordinate courts of India as per provisions of article 141 of Indian Constitution.

Thus, there remains no doubt that Industrial Dispute refers to this court comes within the ambit of Industrial Dispute.

However, I am clarifying the following relevant questions for determination which are involved in the Instant Case.

1. Whether claimant is workman or not as per provision of sec 2(k) Industrial Dispute Act, 1947?

2. Whether claimant is dependent of workman Late Gabel Singh or not and being dependent he can file claim petition or not ?

3. Whether claim of dependent of workman is not maintainable u/s 36 Industrial Dispute Act?

4. Whether Claimant is elder son of workman Late Sh. Gabel Singh?

5. Whether claimant, his other brother and sister were minors at the time of death of workman Late Sh. Gabel Singh and Late Smt. Lalita Devi wife of Workman?

6. Whether after becoming major claimant Gajendra Singh filed claim petition for seeking job. On the ground of sudden death of his father during his service tenure?

7. Whether vacancy occurred in Post Office due to death of his Late father Sh. Gabel Singh Group-D permanent employee, Vikas Nagar, Post Office, Dehradun, Uttrakhand?

8. Whether claimant is entitled for job for survival of him and other family members who are unable to maintain themselves as per service rule and settled law of Hon'ble Supreme Court on the point of compassionate ground?

9. Whether he can be appointed against vacancy occurred due to death of his father during his service tenure who was Group-D permanent employee, Vikas Nagar, Post Office, Dehradun, Uttrakhand?

10. Whether job to any family member of Late Sh. Gabel Singh Group-D permanent employee, Vikas Nagar, Post Office, Dehradun, Uttrakhand has been provided by Post Office department of Dehradun on compassionate ground for survival of family members of his deceased employee?

11. Whether following flimsy, illogical, unwarranted, illegal and baseless pleadings of management contained in his written statement here sufficient to discard the claim of job on compassionate ground by claimant and reject his application:

(i) Claimant is not workman.

(ii) Industrial Dispute is not maintainable u/s 36 Industrial Dispute Act, 1947.

(iii) Claimant is not workman as per provision of Sec 2(s) I.D. Act 1947 so he is not entitled to file Industrial Dispute for seeking job through Daak Karamchari Chaturth Shedi Dehradun Prakhand.

(iv) Selection committee considered the application of claimant on 15.12.2003. His name was not approved on the grounds mentioned in para 9 of order.

(v) Name of the claimant was considered by department for 5% of total existing vacancies.

12. Whether for disposal of application of claimant rules in existence on the death workman shall be applicable or rules of 1999 as pointed out by management shall be applicable?

13. Whether principle laid down by Lord Ship of Delhi High Court in writ petition No. +WP© 1564/2007 decided on 26.7.2013 in case of the management of federation *Vs.* The Government of NCT of Delhi and another is applicable.

Relevant question of determination No. 1, 2 and 3 each decided together.

It is admitted fact that claimant Sh. Gajendra Singh being son is dependent of deceased workman Sh. Gabel Singh.

Now it is to be decided whether claimant comes within the ambit of workman.

It is not in dispute that Claimant is seeking job on the ground of death of his father during his service tenure as workman on compassionate ground hence claim is to be decided on aforesaid basis so he will be cover-up as

workman within the ambit of Sec 2(k) Industrial Dispute Act.

Moreover for deciding the application of claimant it was only required to decide that claimant is son of deceased workman. Which is admittedly proved.

Moreover photocopy of Judgment of writ petition No. +WP© 1564/2007 decided on 26.7.2013 in case of the management of federation *Vs.* The Government of NCT of Delhi and another by Hon'ble Delhi High Court following the settled law of Hon'ble Supreme Court on the point of compassionate ground of providing job to dependent of deceased makes it crystal clear that job of compassionate ground must be provided.

Questions of determinations No. 4 to 10 are proved through evidence of Claimant. Nothing could be extracted out in cross-examination of Claimant by Ld. A/R of the management.

So far relevant question of determination No. 11 is concerned objections are taken by management in its written statement.

I want to mention that aforesaid grounds have not been proved through its evidence by management.

Moreover those are apparently flimsy, illogical, unwarranted, illegal, baseless and without substance. So, on these counts application of claimant must not be rejected although rejected.

In addition to it relevant question of determination No. 12 is liable to be decided in favour of claimant because his application must have been decided in the light of rule in existence on the date of death of Workman.

On the basis of aforesaid discussion I am of considered view that in the light of settled law of Hon'ble Supreme Court and Hon'ble High Court of Delhi reference made to this tribunal is liable to be decided in favour of Claimant and against management.

Reference is accordingly decided in favour of Claimant and against management.

Award is accordingly passed with direction to management that Claimant be provided immediate suitable job as per his qualification on compassionate ground after the expiry of period of available remedy against this Award.

Dated:-23/l/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 771.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कृषि विद्यन केन्द्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/45 का 2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं. एल-42012/12/2012-आईआर (डीयू)]

पी॰ के वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 771.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-1/45 of 2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Krishi Vidnyan Kendra, and their workman, which was received by the Central Government on 05/02/2014.

[No. L-42012/12/2012-IR(DU)]
P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI**

**Present :**

JUSTICE G.S. SARRAF, Presiding Officer

**REFERENCE NO. CGIT-1/45 OF 2012**

**Parties:** Employers in relation to the management of Krishi Vidnyan Kendra

And

Their workman (Rejendra Manik Raut)

**APPEARANCES:**

For the first party : Absent

For the Union : Absent

State : Maharashtra

Mumbai, dated the 2nd day of April, 2013

**AWARD**

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

> Whether the action of the management of Krishi Vidnyan Kendra, Shabari Krishi Prathisthan, Solapur in forcing Shri Rajendra Manik Raut, Cook to submit his resignation on 9.9.2007 is legal and justified? If not, what relief the workman is entitled to?

2. The workman has not appeared inspite of service of notice. No statement of claim has been filed on his behalf.

3. There is no pleading or proof with respect to the point of dispute contained in the schedule.

4. In view of the above the workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 772.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, बीएसएनएल, केरला टेलिकॉम सर्किल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोल्लम के पंचाट (संदर्भ संख्या 4/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/161/2002-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 772.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 4/2008) of the Industrial Tribunal, Kollam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Chief General Manager, BSNL, Kerala Telecom Circle and their workmen, which was received by the Central Government on 05/02//2014.

[No. L-40012/161/2002-IR (DU)]
P. K. VENUGOPAL, Section Officer.

**ANNEXURE**

**IN THE COURT OF INDUSTRIAL TRIBUNAL KOLLAM**

(DATED THIS THE 6th DAY OF NOVEMBER, 2013)

**Present:**

SRI E.K. BHASU,
INDUSTRIAL TRIBUNAL

**INDUSTRIAL DISPUTE NO. 4/2008**

**(Old No. ID. 35/03)**

**Between:**
The Chief General Manager : Management
BSNL, Kerala Telecom Circle,
Thiruvananthapuram
(Represented by Adv. Johnson Gomez
And C.R. Sudheesh)

**And:**

1. The Circle Secretary, : Union/Workman
Bharatiya Telecom Administrative
Offices Employees Union,
Class III & IV, Kerala Circle,
Office of the Chief General Manager,
Thiruvananthapunim

2. The Circle Secretary,
Bharatiya Telephone Employees
Union,
Class III, Kerala Circle,
Office of the Chief General Manager,
Telecom, Kerala Circle,
Thiruvananthapuram

3. The Circle Secretary,
Bharatiya Telephone Employees
LS & CL. IV, O/o the Chief General
Manager, Telecom, Kerala Circle,
Thiruvananthapuram
(Represented by Adv. K.R. Haridas)

**REVISED AWARD**

1. The Government of India, by Order No. L/40012/161/2002-IR(DU) dated 29.08.2001, have referred this Industrial Dispute for adjudication to this Tribunal.

2. The issue for adjudication is the following;

"Whether the action of the management of Bharat Sanchar Nigam Ltd,, Kerala Circle in not implementing the re-structured scheme in respect of Sr.Telecom Operating Assistants in Kerala Circle with retrospective effect though it was implemented in all other Circle is justified? If not, to what relief the workers involved are entitled to?"

3. The averments of the union in the claim statement are briefly as follows:—

The Department of Tele Communication was converted into a Government Company with effect from 01.10.2000 with the name "Bharat Sanchar Nigam Ltd." (hereinafter for short BSNL) and has become the successor Management. Even before the formation of BSNL, modern technology was introduced at a very fast rate to enable the employees to become attuned with the changing situation. The restructuring of cadres was also initiated in Telecom Department from the year 1990 onwards. Kerala Circle is one of the 24 circles of the Telecom Department and all the orders of the Department are also binding on Kerala Circle. Kerala Circle is the first Telecom Circle in India with all its exchanges fully automised. And also the Kerala Circle became the Circle in India to induct new technology in all its establishments. The employees accepted and began working in the new technology area and restructuring

started in the year, 1990. When the Government unilaterally introduced the restructuring Scheme *vide* letter No. 27-4/87-TE II (3) dated 16.10.1990, the posts in the restructured cadres were formed automatically by conversion of pre-structured cadres. The conversion was done in the ratio 2:1 by converting or surrendering 2 existing posts of Telecom Operating Assistants for one post of Senior Telecom Operating Assistant. The Department *vide* its letter No. 27-4/8770-TE II (3) dated 16.10.1993 introduced the above scheme and restructured pay scales was also given to compensate for their skills utilized in the upgraded post.

4. As per Department of Telecom order 15-22/92-TEIl dated 14.10.1993 and No-27-2/94 TE II (IV) dated 31,08.1994, all officials who were to be granted officiating promotion must actually working in the new technology area. But in Kerala all employees were working in the new technology since, 1990, as the Kerala Circle achieved full automisation in. 1990.

5. The Senior Telecom Operating Assistants Scheme which was introduced from 16.10.1990 on all India basis was introduced in Kerala Telecom Circle from 09.09.1992 only. Though the employees who were working in Civil and Electrical wing of Kerala Circle, were given promotion as Senior Telecom Operating Assistants from 09.09.1992 as per the direction of CGMT, Kerala Circle, similarly placed Administrative, Traffic and Engineering employees were not given the above promotion but it was given to them at first only on 13.12.1996. The above order of Chief General Manager, Kerala Circle is in violation of letters of Department of Telecom, New Delhi dated 14.08.1993 and 31.08.1994, wherein it is stated that all the officers who were performing the duties as restructured cadres were to be granted officiating/adhoc promotion if they were actually working in new technological area as specified in DOT, ND Letter No.27-10/93 TE II dated 02.08.1994.

6. Though the Administrative, Traffic and Engineering employees in Kerala Circle were given officiating, promotion as Senior Telecom Operating Assistants, with effect from 01.01.1994 actual benefits were given only from 01.10.2000 *vide* CGMT Letter No. STA/40-5/Rlgs/IV/2000 (Part III) dated 31.12.2001.

7. While the scheme was introduced as per the guidelines of Department of Telecom, New Delhi, no reason is assigned why it was not implemented in the case of Administrative, Traffic and Engineering employees in Kerala Circle, The action of the CGMT in denying the benefits to the Senior Telecom Operating Assistants is unilateral arbitrary and without any base and is against the directions of the Department of Telecom, New Delhi. The Senior Telecom Operating Assistants have been discriminated not only against the counterparts elsewhere but also against Civil, Electrical employees of Kerala Circle to whom the above benefits were given with effect from 09.09.1992.

8. The action of BSNL is not justified in not implementing the restructured scheme in respect of Telecom Operating Assistants in Kerala Circle with retrospective effect. They are entitled to get the benefits of restructured scheme as it was made applicable in Electrical/Civil wing of Kerala Circle with effect from 09.09.1992 and all other circles. Hence prayed for an award that the Telecom Operating Assistants in Kerala Circle are entitled to get all the benefits of the restructured scheme with retrospective effect from 09.09.1992 and with all other consequential benefits.

9. The management very vehemently opposed the claim of the union as follows:—

> When the BSNL, Kerala Circle initiated its action to process the officiating promotion in 1994, some of the officials challenged the action before the Central Administrative Tribunal, Ernakulam Bench in OA No. 1109 of 1994 on the ground that the department could not enforce draft recruitment rules of Senior TOA before it has been gazetted. The above Tribunal ordered that until a Rule breaths in to life, it has no force, so the drawing up of eligibility list and deputing of officials for training based on the eligibility list and empanelment of officials have come within the purview of preparatory measures taken to implement the Draft Recruitment Rules and such measures were prevented by the order of the Administrative Tribunal. Hence the Kerala Circle of the management was not in a position to give officiating promotion to fill the posts due to the reason that the creation of Senior TOA by surrendering two posts of TOAs was come to a standstill on the basis of the order of the Administrative Tribunal. So the Kerala Circle has to wait for the creation of posts till after the Recruitment Rules of Senior TOA were notified on 17.06.1996.

10. In the meanwhile another OA No. 1388/95 was filed by some applicants for a declaration that the applicants were eligible for consideration to be promoted as Senior TOA on officiating basis. The Central Administrative Tribunal *vide* its judgment held that since the action in the forms of the draft Recruitment Rules was prohibited by the Tribunal in O.A. No. 1109 of 1994, the action of the Kerala Circle in not acting as per the DOT order dated 31.08.1994 till the amended Recruitment Rules were gazetted on 17.06.1996, cannot be faulted. So the order dated 31.08.1994 of DOT could be implemented in the Circle with effect from 13.12.1996.

11. One Smt. Lathika G.Nair and 35 others filed an OA No.396 of 2001 before CAT seeking that the posts in the restructured cadres may be filled up by posting the empanelled officials in the select panel on officiating basis pending formal appointment after their selection and training. While the above OA was pending the staff union demanded to implement the Scheme with effect from 01.01.1994. Pursuant to the demand, a meeting was

convened, in which it was decided to grant notional officiating promotion as Senior TOA from 01.01.1994 and the actual benefits to be given from 01.10.2000 and as such BSNL Corporate Office issued order *vide* No.250-3/2001-Pers- III, dated 03.12.2001.

12. The OA No. 396 of 2001 was disposed by the CAT holding that the Tribunal will not be justifying in interfering in the matter of implementing the order of Government and further directed to the respondent to dispose of the representation of applicant dated 22.02.2000 with respect to the extent of rules and regulations and to take a decision within four months. The BSNL disposed of the petition and intimated it *vide* their letter No.252-30/2000/STN/Pers-III dated 03.01.2003 the above stand which was taken in the agreement between the Management and the union that the notional fixation can be given from 01.01.1994 and actual benefit from 01.10.2000.

13. For the above reason, there is no fault on the part of the management in not implementing the restructured scheme in respect of TOAs in Kerala Circle with retrospective effect. Hence prayed for an award rejecting the claim of the union upholding the contentions of the management.

14. One witness has been examined on the side of the union and marked Exhibits W1 to W7 and management produced M1 to M3.

15. On the facts and evidence adduced from both sides, this Tribunal passed an award on 29/1/2010 allowing the claims of the union. Aggrieved by the award, the management took up the matter in appeal before the Hon'ble High Court of Kerala and that by judgment dated 2/1/2013 set aside the award and remitted back to this Tribunal for fresh consideration. That is how this dispute is again before this Tribunal.

16. The Hon'ble High Court while remanding the case made the following observations at page 10 para 12 and 13 of the judgment.

12. "The next question to be considered is whether there is any illegality in the order passed by the management in respect of certain category of employees. Exhibits P7 to P10 are produced to show that the management has cancelled the benefit extended to Civil and Electrical Department who were given the benefit of retrospective promotion and monetary benefits with effect from 09.09.1992. In fact this matter was an issue before the Tribunal as the Tribunal had raised certain points for consideration, but apparently the issues had not been framed by the Tribunal as a procedure and therefore if the Tribunal was called upon to answer the issue referred on the basis of the materials produced relating to the benefit given to certain persons in Civil and Electrical wing of Kerala Circle, definitely an opportunity should have been granted to the Management to adduce evidence regarding the reason why such benefits had been extended. The materials available on record does not indicate that such an opportunity was given to the Management. Hence I am of the view that the Management was not given sufficient opportunity to adduce evidence regarding the alleged mistake committed by them. If as a matter of fact the cadre change of members of Civil and Electrical wing was a mistake and it was corrected by the department, apparently such materials were not available before the Tribunal for answering the reference. Therefore, 1 am of the view that this is a matter which requires to be re-considered.

13. In regard to the contention that in the absence of the members of the Union not working in the said post of 'Senior Telecom Operating Assistant' they were not entitled for monetary benefits is also a matter to be considered by way of evidence which is lacking in the present case. The Tribunal has not considered his aspect at all. For that reason also Exhibit P6 is liable to be set aside and the matter requires to be reconsidered.

In that view of the matter this writ petition is allowed as follows:—

> Exhibit P6 order of the Tribunal is set aside. The matter is remitted back to the Tribunal for fresh consideration. The parties are free to file additional pleadings and adduce fresh evidence in the mater and the Tribunal shall consider and dispose of the matter afresh and in the light of the observations made above within in a period of six months from the date of receipt of copy of this judgment".

17. After remand from the Hon'ble High Court, the union hasn't filed any additional pleadings where as the management has filed additional written objection and the contentions are briefly stated as follows:—

18. Because of legal hurdles that arose from the judgment of Hon'ble Central Administrative Tribunal, Ernakulam in O.A No. 1109/94 and OA No. 1388/95 the management could not continue the process of restructuring. However the formalities were completed and recruitment in the cadre of Sr. TOA was effected in Kerala Circle *w.e.f.* 13/12/1996, which was the earliest possible date ie after the notification of RR in the Gazette of India dated 29/6/1996 as per GSR No. 265 dated 17/6/1996. After the formation of BSNL a meeting was held between Director (HRD) and the Bharatiya Telecom Employees Federation on 30/10/2001 to discuss the issue of giving of officiating promotion to eligible officials in the cadre of Sr. TOAs in Kerala Circle *w.e.f.* 01.01.1994 to place them at par with other Telecom Circles. The management agreed in granting notion officiating promotion from 01/01/1994 so that pay fixation is done accordingly and actual benefits are given from 1/10/2000 and orders were issued and accordingly approval was issued to all units of Kerala Circle.

19. It is further contended that the Works Clerks of Civil/Electrical wing recruited prior to 1/10/1986 were wrongly converted as Sr. TOA instead of TOA *w.e.f.* 9/9/1992 misinterpreting the DOT order 10-21/92-CSE dated 25/10/1996. When it was noticed, directions had been issued for reviewing all the wrong restructuring done in Civil Wing and to correct the errors. Accordingly all the mistakes had been corrected by the Civil Wing and the earlier erroneous orders of retrospective promotion to the cadre of Sr.TOA *w.e.f.* 9/9/1992 were cancelled and revised orders were issued in respect of each and every official. So the unions cannot stake a claim for benefits based on erroneous order which were later rectified by revised orders. Therefore there is no fault on the part of the management in not implementing the restructured scheme in respect of TOAs in Kerala Circle with retrospective effect and as such the prayers and claims of the unions are not allowable. Hence prayed for an award rejecting the claims of the union upholding the contentions of the management.

20. After the remand from the Hon'ble High Court, the union examined one more witness as WW2 and marked Exhibit W8. The management has examined Assistant General Manager (HR) as MW1 and produced records and marked Exhibits M4 to M25.

21. From the rival contentions and pleadings of parties involved in this dispute, the issues that arise for consideration are:—

(1) Whether there is any discrimination or partiality effected in not implementing the restructured scheme in the case of TOAs in Administrative, Traffic and Engineering employees in Kerala Circle with effect from 09.09.1992 when it was effected in retrospective effect from 09.09.1992 in respect of employees of Civil and Electrical wing of Kerala Circle.

(2) Whether the workers (TOAs) represented by the union are entitled to get the benefits of restructured scheme *w.e.f.* 09.09.1992, which was made applicable to employees in electrical/civil wing of Kerala Circle of management?

22. **The Point:—**

It is not in dispute that BSNL has 24 circles all over India and the Kerala Circle is one amongst them. The Kerala Circle was the first circle in India with all its exchanges fully automized and it is evidenced by Exhibit W1 letter No. M(S)/TC/90-144/R dated 09/04/1990. The employees of Kerala Circle have been working in the new technology area from the year 1990 onwards without interruption. The process of restructuring of cadres started in the year 1990 on the basis of automisation as per Exhibit W2 order No.27-4/87-TE. II (3) dated 16/10/1990. The restructured cadres were created by converting pre-structured cadres by surrendering two existing TOAs for one post of Senior TOA *i.e.* by adopting a ratio of 2:1 and it was introduced with effect from 16/10/1990 in the department.

23. By Exhibits W3, W4 and W6, the management made it clear that the employees who have been working in the new technology area were to be granted adhoc promotions in the restructured cadres and the employees who were to be granted officiating adhoc placements in the restructured cadres should have worked in the new technology area. In the Kerala Circle all the employees have been working in the new technology area from 1990 onwards, as the Kerala Circle had achieved full automisation in all its establishment which aspect is evidenced from Exhibit W1.

24. The learned counsel of the union submitted that in Kerala Circle the promotions were effected to those employees who were working in Civil and Electrical Wings with effect from 09.09.1992 while it was introduced in the Department with effect from 16/10/1990 which was proved by Exhibit W6 & W7. But the other employees working in other wings of the Kerala Circle were given officiating promotions to the post of Senior Telecom Operating Assistants notionally with effect from 01.01.1994 and the actual financial benefits have been allowed only from 01.10.2000. It is further argued, in the above circumstances, that the employees represented by the union are legally entitled to get promotions to the post of Senior Telecom Operating Assistants *w.e.f.* 09.09.1992 with full financial benefits as in the case of those employees who are working in Civil and Electrical wings who have been granted such promotion with retrospective effect from 09.09.1992 as per Exhibit W6 & W7 orders.

25. The learned counsel of the management resisted the argument of the union by producing Exhibit M1 & M2 which were the judgments of the Hon'ble Central Administrative Tribunal, Ernakulam. When the BSNL, Kerala Circle initiated action to process the officiating promotion, some of the employees challenged the action on the ground that the Department could not enforce draft Recruitment Rules of Senior TOA before it has been gazetted. The CAT by its Exhibit M1 judgment ordered that until a Rule breaths into life, it has no force. Hence the drawing up of eligibility list, deputing officials for training based on eligibility and empanelinent of officials come with in the purview of preparatory measures taken to implement the Draft Recruitment Rules and all such measures were prevented by Exhibit M1 judgment of the Hon'ble Central Administrative Tribunal. So the Kerala Circle could not effect officiating promotions to fill up the posts, in the result the creation of posts in the present case has to wait till after the Recruitment Rules of Senior TOA were notified in the gazette on 17/06/1996.

26. Even while Exhibit M1 & M2 judgments of the CAT were in force, the management had implemented adhoc promotions to the employees belonging to Civil and Electrical Wings of Kerala Circle to the restructured posts of Senior Telecom Operating Assistant *w.e.f.* 09/09/1992

which is evidenced by Exhibit W6 & W7 promotion orders. The management very vehemently contended and argued that by Exhibit M15 order of Ministry of Communications, Department of Telecom has ordered effective date of implementation of TOA pattern extended to the clerical staff of Telecom Civil Wing recruited prior to 01/01/1986, from 09/09/1992. By Exhibit M16 order of Ministry of Communication, Department of Telecom directed to create post of Sr. TOA in Civil Wing as per requirement in terms with the conditions laid down in the order. It is specifically stated to Exhibit M14 that all orders will come in to force with effect from 01/01/1994. Misconstruing Exhibit M14 to M16 orders, the office of the Chief Engineer (Civil) violated the above order without perceiving the substance in it and issued Exhibit M17 erroneous order placing 13 officials in the promotion cadre of Sr.TOA instead of placing them in the grade of TOA. The mistake was subsequently noticed by the Chief General Manager and thereupon reported by Exhibit M18 letter to DDG (Pers), DOT, New Delhi. After the Exhibit M18 letter, the Chief General Manager, BSNL, Kerala Circle issued Exhibit M10 to the Chief Engineer Civil Wing directing to rectify the mistake committed. Persuing the direction of Exhibit M10, the promotions erroneously granted as per Exhibit M17 was cancelled and fresh orders issued granting regular promotions as Sr. TOA to eligible employees as per Exhibits M19 and M20, The management on the request of Bharatiya Telecom Employees Federation, for extending the benefit of officiating promotions to eligible officials in grade of Senior TOA in Kerala Circle *w.e.f.* 01/01/1994 to place them at par with other Telecom Circles, considered in a meeting held between Director (HRD) and representatives of the union and agreed the issue of granting notional officiating promotions from 1/1/1994 for the pay fixation and actual financial benefits from 1/10/2000 as per Exhibit M22 minutes. In pursuance of Exhibit M22, Exhibit M8 and M9 were issued from the office of BSNL Ltd,, to the competent authority in Kerala Circle for grant of notional officiating promotions as Sr. TOA from 1/1/1994 for pay fixation only and actual benefits from 1/10/2000.

27. It is in evidence that Exhibit W6 & W7 which were erroneous orders, based on which the unions claim their right of promotion as Sr.TOA and benefits *w.e.f.* 9/9/ 1992 were not in force. So the unions cannot stick on Exhibit W6 & W7 for implementing the same to the members of the union. The union and its members cannot claim the promotions in the cadre of Sr. Telecom Operating Assistants in Kerala Circle with retrospective effect as erroneous orders, especially not in force cannot be implemented and union cannot claim it as a right for promotion. The members of the unions are eligible only for notional promotion from 1/1/1994 so that the pay fixation is done accordingly and actual benefits from 1/10/2000.

28. In the result, I hold that the workmen represented by the union in this dispute are not entitled to get promotion to the post of Sr. TOAs with effect from 09/09/1992 with full financial benefits with effect from that date as per Exhibit W6 & W7 which were rectified and corrected as it were erroneous orders, by the management.

29. An award is passed accordingly.

Declared in open court this the 28th day of November, 2013.

E.K. BHASU, Industrial Tribunal, Kollam

**APPENDIX**

**Witness examined on the side of the union**

| | | |
|---|---|---|
| WW1 | — | Sri. Devidas |
| WW2 | — | Sri.Rajan Nair |

**Witness examined on the side of the Management**

| | | |
|---|---|---|
| MW1 | — | Sri. M. Krishnaswamy |

**Exhibits marked on the side of union**

| | | |
|---|---|---|
| Exhibit W1 | — | Order dated 9/4/1990 |
| W2 | — | Order dated 16/10/1990 |
| W3 | — | Order dated 14/10/1993 |
| W4 | — | Order dated 31 /8/1994 |
| W5(1) | — | Order dated 2/8/1994 |
| W5(2) | — | Order dated 9/9/1994 |
| W6 | — | Order dated 14/7/1998 |
| W7 | — | Order dated 2/1998 |
| W8 | — | Information under RTI Act 2005 dated 26/6/2013 |

**Exhibits marked on the side of Management**

| | | |
|---|---|---|
| Exhibit M1 | — | Order in OA No 1109/94 |
| M2 | — | Order in OA No. 1388/95 |
| M3 | — | Order in OA No. 396/2001 |
| M4 | — | Letter dated 11/7/1991 |
| M5 | — | Copy order in OA No. 1109/94 |
| M6 | — | Copy of Recruitment Rules dated 17/6/ 1996 |
| M7 | — | Copy of order in OA No. 1388/95 |
| M8 | — | Letter of BSNL dated 3/12/2001 |
| M9 | — | Copy of Letter of BSNL Circle Office dated 31/12/2001 |
| M10 | — | Copy of letter of CGMT dated 31/7/2012 |

| | | |
|---|---|---|
| M11 | — | Copy of letter of BSNL Corporate Office, New Delhi Dated 3/1/2003 |
| M12 | — | Copy of letter Notification dated 30/ 10/2008 |
| M13 | — | Copy of order in OA No-396/ 2001 |
| M14 | — | Copy of order dated 31/8/1994 |
| M15 | — | Copy of order dated 29/3/1995 |
| M16 | — | Copy of order dated 25/10/1996 |
| M17 | — | Copy of Office Order dated 14/7/1998 |
| M18 | — | Copy of DO Letter dated 5/1/2000 |
| M19 | — | Copy of order dated 4/9/2012 |
| M 20 | — | Copy or order dated 10/5/2013 |
| M 21 | — | Copy of office order dated 3/5/20 13 |
| M 22 | — | Copy of Minutes dated 30/1 0/2001 |
| M 23 | — | Copy of order and resolution dated 3/3/2006 |
| M 24 | — | Copy of Corporate Office letter dated 13/7/2010 |
| M 25 | — | Copy of office memorandum dated 30/9/2000 Issued by the Government |

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 773.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार (संदर्भ संख्या 01/2011) चीफ इंजीनियर, ह॰क्यू॰, सेंट्रल कमांड, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण श्रम एवं न्यायालय 2, धनबाद के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं एल-13011/03/2010-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 773.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 01/2011) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Chief Engineer, H.Q. Central Command, Lucknow, and their workmen, which was received by the Central Government on 05/02/2014.

[No. L-13011/03/2010-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2) AT DHANBAD**

**Present :**

SH. KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

**REFERENCE NO. 01 OF 2011**

**PARTIES** :

The Gen. Secretary,
Bihar Area MESS Employees Union, CWE, Ranchi.
*Vs.* Chief Engineer,
H.Q. Central Command, Lucknow 226002.

**APPEARANCES :**

| | | |
|---|---|---|
| On behalf of the workman/ Union | : | Mr. Satyendra Ram, Rep. of the workman, Ld. Advocate |
| On behalf of the Management | : | Mr. Niranjan Kumar, Ld. Advocate |

**State :** Jharkhand **Industry :** Defence

Dated, Dhanbad, the 13th Jan., 2014

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-13011/ 3/2010(IR(DU) dt. 28.12.2010.

**SCHEDULE**

"Whether the actions of the management of H.Q. Commander Works Engineer, Military Engineer Services, Dipatoli Cantt. Ranchi under the Chief Engineer, H.Q. Central Command in transferring Shri Mukund Ram, Civilian Motor Driver (Ordinary Grade) from H.Q. CWE, Ranchi to GE Dipatoli, Ranchi without following the 'Guidelines Management of Gr. C&D posts of MES- Aug. 2007 and denial of wages, DA Arrears, Annual increment to said workman are legal and justified? To what relief the workman is entitled to?"

2. Irrespective of unnecessary facts, the case of sponsoring Bihar Area MES Employees Union for workman Mukund Ram is that the workman MES/Army No. 13833720 was doing his bonafide duty at H.Q. Commander Works Engineer (Military Engineer Services), Dipatoli Cantt, Ranchi since his appointment as Civilian Motor Driver (Ordinary Grade) there on 15.09.1997. As per the Letter No. B/20148/PP/EIC(l) dt. 27th the August, 2007 of the Director General (Pers.), MES, IHQ of MQD (Army), E-in C's Branch, New Delhi, regarding the guidelines of Management Policy, the Local Heads/Senior Most Authority Commander of H.Q., CWE (MES), Ranchi for Ranchi Station has been empowered for posting of the Group 'C' employees who have been assigned to sensitive jobs, but not for that of the Civilian Motor Driver from his one formation to another under LTO Head, as his job not falls under the sensitive cagtegory. According to the said policy of the Management only the H.Q. Chief Engineer Central Command, Lucknow, the Appointing Authority of Civilian Motor Driver, has power to post/transfer the Civilian Motor Driver for better utilization of his service in exigency. But the H.Q. CWE (MES), Ranchi as per his Order No. 10534/EIC(2) dt. 30th Jan., 2010 transferred the workman from H.Q. Ranchi to G.E., Dipatoli by replacing him with another employee MES-468674, Suraj Kumar as Mate (SS) MTD beyond any category who is not an MT Driver but a Mazdoor, as clarified by the letter dt. 2.3.2010 of the HQ, CWE (MES), Ranchi, without specific ground in violation of the aforesaid guidelines for the Management of Group 'C' & 'D' posts of MES. Besides, Shri Munari Yadav, one of the Civilian Motor Drivers, held on the strength of H.Q. CWE, Ranchi as per the H.Q. CWE, Ranchi, Letter No. 10535/433/EIC(2) dt. 2.3.2010, has retired. Since there was neither decrease nor increase in the authorized post of jobs at H.Q. CWE, Ranchi or at G.E. Dipatoli respectively on 30th Jan., 2010 as a compelling factor of exigency for the transfer of the workman which is prejudiced/malafide. The comment of H.Q. Commander Works Engineer (MES), Ranchi, in his letter dt. 16.3.2010 that as per Para 47 of the E-in-C's Branch Letter No. B/20148/PD/EIC(1) dt. 27th August, 2007, he has power to make the posting within the station as done in the present case is misinterpretative, as the Management Policy under pares 47 and 57(d) empower him to carry out posting under LTO in May/June of the year, but not in Jan, 2010 as done with the workman.

3. Further it is alleged by the Union for the workman that on the Movement Orders dt. 3.2.10 of the H.Q. CWE, Ranchi, having been served upon the workman, he submitted his representations on 12th, 20th Feb. and 15th March, 2010 (Appendixes J-L respectively) through proper channel to the Competent Authority, H.Q. CE, Central Command, Lucknow, for availing of the facilities as under Para 61 of the Management Policy, but it is still pending even after lapse of more than a year. But the action of the Management of H.Q. CWE, Ranchi, without waiting for a decision of the competent authority, and in disregard to the aforesaid guidelines of the Management Policy, was a victimization for the workman, in course of commenting upon the representations of the aggrieved workman, the Management of HQ/CWE (MES) Ranchi after taking consent from the Competent Authority, Lucknow, as per the Latter's letter No. 901405/MTD/XIV/20/EIC(2) dt. 30th June 2010 (Appendix-M) with its enclosures was submitted to the Regional Labour Commissioner, Ranchi, as per its letter dt. 7th July 2010. The decision of the Central Command, Lucknow, as directed under its Para 2 to his aforesaid letter dt. 30.6.10 has yet not been followed, so it shows a malafide of the Management of H.Q. CWE, Ranchi.

It is alleged that while the workman, Civilian Motor Driver (Ordinary Grade) showing his presence at his duty place, H.Q. CWE, Ranchi till date, the Management of H.Q. CWE, Ranchi put his attendance in CMD(OG) in suspended mode after 6th Feb. 2010, and stopped his salary from March, 2010 onwards and payment of DA. Arrear from Jan. 2010 and Annual increment from July, 2010 rendering him and his family members in penury. At last after the approach of the workman to the Union in search of natural justice, the Union found the detraction of the Management from legal path to illegal track was due to the willful malice and creation of Mr. A.K. Verma, the Admn Officer, dealing all the personnel matter of the management towards the workman. The representation dt. 15.4.2010 of the Union to the Central Command, Lucknow, in that regard is still unresponded. At raising the Industrial dispute before the R.L.C.(C), Dhurwa, Ranchi, when the conciliation proceeding failed, it resulted in the Reference for an adjudication for the reliefs as prayed.

4. The Union concerned in its rejoinder has specifically denied the allegations of the O.P./Management as false, fabricated and baseless, stating that posting/ transfer of a worker like the present workman is made in the interest of Management, that too, on the basis of surplus and deficiency of staff in GE Dipatoli. The allegations against the workman are false. No Show Cause has been served upon him. Availing of a leave is as per entitlement of a worker to meet his requirement as and whenever arises. Promotion to Sri Suraj Kumar to the Post of (SS) and posting him in CDS is just for the personal benefits of the officer concerned. He is driving the staff car more or less in violation of the rules. The CWE has not submitted a clear position before the RLC, Ranchi.

5. Whereas the case of the O.P./Management with categorical denials is that ME/Army No. 13833720 Sri Mukund Ram, M.T.D. (Ordinary Grade) was SOS from the H.Q. on permanent posting to G.E., Dipatoli at about 300 meters away from the H.Q., CWE, Ranchi, against the nil holding of M.T.D. GE, Dipatoli as per the H.Q. movement Order No. 10022/MO/142/E1 C(1) dt. 03rd Feb., 2010 with date of SOS on Feb., 16, 2010 (A.M.). The workman was

the most Senior serving for 10 years at the H.Q. Ranchi to run the vehicle of GE Dipatoli for daily requiremnt of vehicle thereat. He submitted his representation on March, 15, 2010 against his posting after 36 days of the SOS date whereas the representation is required to be made within 21 days against the posting order as per the policy of Management for Groups 'C' & 'D' personnel of the MES. On consideration of his representation at appropriate higher level, it was agreed with the decision of CWE, Ranchi, as per the H.Q., CWCC, Lucknow, Letter No. 9014405/MTD/X10/26/EIC(2) dt Jul.30, 2010 as also communicated to him on Jul.6, 2011, directing him to join the duty at his new unit. While serving the Movement Order upon the workman, he was instructed about his claim for the payment of his pay and allowance for the month of Feb. 2010 and onward would be sustainable only after his reporting for the duty to the new Officer, GE, Dipatoli. But the workman has not reported for duty till March 3, 2011. Hence his pay and allowance have not been claimed by him at the new unit. The CWE is the Competent Authority to post the staff from one office to other in the situation as per Para 47 and 63 of the guidelines as per E-in-C's Branch Letter No. 20148/PP/EIC(1) dt. Aug. 27, 2007 and the same has been approved by the HQ Chief Engineer, Central Command and HQ. Chief Engineer, Jabalpur Zone as per their Letters dt. June 20 and May 31, 2010 respectively.

6. The O.P./Management in its rejoinder has specifically denied the allegations of the Union/workman, and stated that Sri Suraj Kumar, Mate (SS)MTD was transferred to CDS Ranchi in lack of MTD other there to drive the vehicle held on the charge of CSD, RAnchi to carry out daily work of collection of stores from the Railway Station etc. Later on, he has willingly opted for driving the Staff Car of H.Q. CWE, Ranchi. Accordingly the driving of Staff Car of CWE as well as of the vehicle of CDS, Ranchi by him whenever required was according to his laid down duties as Mate (SS) MTD. The posting of the workman from one office to another is as per existing policy. He was not transferred under Local turnover from non sensitive to sensitive appointment, rather he was transferred to GE, Dipatoli in the interest of state against adjustment of Sur/Def. at the station for which the CWE is the Competent Authority as per Para 8 of the policy of the Management. There is no violation of any guidelines as issued by E in C's Branch for Management of Group C & D employees of the MES. The workan is habitual to take leave frequently due to personal and domestic problem. His behaviour is at times arrogant with the Supervisory Staff. He has been serving in the H.Q. since 1997. In order to cater for deficiency; he has been transferred to GE Dipatoli where only an MTD existed against the authorization of 05 MTD. There is also no change of station and accommodation of the workman, as GE Dipatoli only 300 Mtrs away from the H.Q. There is no malafide since Mate (SS) MTD does not exist in MES; the case has already been referred to the Higher Authority for remedial action which is still awaited. The decision of the CWE, Ranchi, was accepted by the Higher Authority over the representation of the workman as per Para 2 of the H.Q, CECC, Lucknow letter dt. May 31, 2010 which was communicated to him in person on July 6, 2010, directing him to join duty.

Besides, posting order is issued with the approval of CWE Order., but not by the Admn. Officer in respect of Group "C" & "D" employees. The Management as per its letter dt. May 20, 2010 has represented before the R.L.C. that the matter being non-industrial as the workman as non industrial personnel comes not under the Industrial Dispute Act. The posting order is cancellable only by the Higher Authority. The workman has been already struck off the strength of the H.Q. CWE, Ranchi on the very 6th Feb 2010, so his regular presence at the H.Q., CWE, Ranchi does not rise. The department has no provision to pay the salary with 18% interest. The workman has reported for duty on 4th March, 2011, so the application being redundant now is liable to be dismissed. So the applicant is not entitled to any reliefs.

**FINDING WITH REASONS**

7. In the instant Reference, WW1 Mukund Ram, the workman himself, WW2 Ram Jatan Ram, MCM, MES, Power House, Depatoli, Ranchi for the Union, and MW1 Arvind Kumar Singh, the Barack Store Officer cum Officiating A.O. CWE, Ranchi for the O.P./Management have been respectively examined.

On perusal of the pleading and evidences, oral and documentary, of both the parties, it appears the undisputed fact that the workman had been working as the Civilian Motor Driver (CMD) (Ordinary Grade) at the H.Q. CWE, Ranchi since his appointment on 15.09.1997. It is no doubt incontrovercial that the post of petitioner workman as the Civilian Motor Driver (Oral Grade) comes under the category of Basic Category; for the transfer of this category, the Chief Engineer is the Competent Authority, and the transfer of basic category (internal) comes under the establishment Unit, not outside, which applies to all categories industrial and non-industrial etc. But the facts of the transfer of the petitioner by the Local Authority and the Competency of the Local Authority for it, etc., evolve as the main issues for proper adjudication in the reference:

(I) Whether the transfer of petitioner workman by Local Management/the H.Q. Commander Works Engineer (CWE), Ranchi to GE, Dipatoli/Ranchi as per the guidelines for the Management of Group 'C' 'D' MES personnel is valid and

(II) Whether denial of the local Command to the payment of wages, Arrears, Annual Increment to the workman without the result of his representation from the H.Q. Central Command concerned is justified.

8. As to the first point there is no dispute the petitoner workman while working as the C.M.D. (Ordinary Grade) at the H.Q., CWE, Ranchi since his appointment in the year 1997, he was accordingly posted/trasferred from there to GE, Dipatolia, and MES/468674 Shri Suraj Kumar, Mate (SS), MTD from GE, Dipatoli to CDS, Ranchi vice versa as per the letter dt. Jan 30, 2010 of the Local command, CWE Ranchi (Extt. W.1=M1). No sooner had the workman got his Movement Order dt. Feb. 3, 2010 (issued by Mr. A.K. Verma, A.O.-I for CWE (Ext. W.3=M-1/1) than he submitted his four representations dt. 12th and 20th Feb., 15th March and 15th April, 2010 (Ext. W.4 series and Ext. 5 respectively) all to the Chief Engineer, H.Q, Central Command, Lucknow (through proper channel in that regard, so the workman's representations were well within 21 days of the receipt of posting order as under Para 61 of the Guidelines for Management of Gr. 'C' 'D' Posts of MES (Ext. W.2). The fact of rejection of the workman's representation as per the letter dt. 30th June, 2010 of the Authority concerned (Ext. M.2.) is considerable for assertion of the real facts in issue. The letter of the Lt. Col.SO1(Pers.) for the Chief Engineer addressed to the Chief Engineer, H.Q. Jabalpur Zone is response to the representations of the workman dt. 20th Feb. and 15 the March, 2010 reads parawise as such:

> "Para 2 Parawise comments received vide your above: ref letter has been discussed at appropriate level and agreed to. You are informed/requested to issue direction to CWE, Ranchi to call the individual in person and explain the rule position/posting policy for his satisfaction.
>
> Para 3 However, as per Para 1(d) of comments, MES 468674 Shri Suraj Kumar is indicated as (Mate SS) MTD. Kindly intimate the authority under which this new trade has been created. No such category exists in MES. You are therefore, requested to amend all you records accordingly."

The letter dt. 30the June, 2010 of the Central Command to the Chief Engineer, H.Q Jablapur zone indicates that the parawise comments of the Zonal Command after discussion at appropriate level were agreed to and the CWE Ranchi was directed to call the individual in person and explain the rule position/posting policy for his satisfaction. The OP/ Local Management has neither pleading nor proof whether the instructions as stated by the Central Command were carried out. The above letter also affirms the fact that 'No such category as (Mate SS) MTD regarding MES 468674 Shri Suraj Kumar Exists in MES, so the local command was directed to mend all his records accordingly.

9. The transfer of the workman concerned as per the statement of MWI Arvind Kumar Singh, has taken place as per the Administrative Order under the Guideless of Management of Group 'C' & 'D' posts of MES governing all the above group posts; though the petitioner who had to join just on the following day 7th Feb. 2010 at the G.E. Dipatoli, yet he joined there also most after one year in march. 2011. The Administrative ground, one of the eight contingencies as under Para 8 of the Guidelines warranting transfer of personnel from one place to another, does not justify it normally except in very special circumstances like adjustment of surplus and deficiency ... exigencies of service or as an administrative requirement which include turn over posting as stipulated under para 52 and 53 of the Guidelines. Obviously, the present reference has no case of either surplus or deficiency. Even the Authorities empowered for Local Turn Over (LTO) in exercise of their power by virtue of Para 47 of the guidelines (Ext. W.2) could not fairly follow the procedure of transfer regarding the workman from H.Q CWE, Ranchi to G.E. (Garison Engineer), Dipatoali as asserted the petitioner workman Mr. Mukund Ram (WWI) and Ram Jatan Ram (WW2). The transfer of the petitioner in the case prima *facie* appears to be malafide, as it appears to be hastily effected but biasedly. Transfering an employee is the prerogative of the employer but it should not be actuated with malafide. Transfer of an employee is an incident of service conditions and no employee can have a right to remain at one place as held by the Hon'ble Apex Court in the case of National Hydro-Electric Power Corp. Ltd. Vs. Shri Bhagwans, (2001) 85CC 574:2001 LLR 1222(SC). But in view of willful violation of the transfer of the petitioner, I feel proper to point out on the other hand that is also settled law that the Court will be slow in interfering with the transfer of employees except where there is any malafide or violation of statutory rules as held by the Hon'ble Supreme Court in the case of Chitra Srivastava (MS) Vs. Govt. of National Capital Territory of Delhi, (2004) 12 SCC 299, as also held by Hon'ble High Court, Jharkhand in the case of Shambhu Paswan Vs. Central Mine Planning & Design Institute Ltd., Kanke Road, Ranchi 2004 LLR 75C (Jharkhand High Court). Therefore, it is held that the transfer of the petitioner by the O.P./ Management being biased is undoubtedly improper and invalid.

At the second point related to denial of wages etc. The statement of Mr. Arvind Kumar Singh Barrack Store Office-cum-Officiating A.O., CWE, Ranchi (MWI) reveals the fact that as per the last line of the Movement Order (Dt. 3.2.2010-Ext. W.3= Ext.M.1/1) following the posting/transfer MTD letter Dt. 30.01.2010 in respect of the petitioner/ workman (Ext.W.1=Ext.M.1), the pay for the month of Feb, 2010 would be claimed from the transferring Unit and next pay for the month of March, 2010 would be claimed from the transferee Unit (G.E,. Dipatoli). The present case has no express rejection of the workman petitioner's representations dt. Feb. 20 and Mar. 15, 2010 (Ext.W.4/1-2), rather impliedly by the term "agreed to" so as per the Chief engineer's letter dt. June, 30, 2010 (Ext. M, 2) nor any fact nor a proof of its service to have been effected upon the petitioner. The materials on the case record obviously indicate hastily stoppage of his salary etc. from March

2010 during the pendency of his above relevant representations, Hence, it is unjustified.

In the above circumstances, it stands obvious that the transfer of the workman petitioner was punitive and malafide effected by the incompetent authority in violation of the Management policy. Therefore it is in the terms of the Reference hereby.

**ORDERED**

That the Award be and the same is passed that the actions of the Management of H.Q. Commander Works Engineer, Militry Engineer Services, Dipatoli Cantt. Ranchi under the Chief Engineer, H.Q., Central Command in transferring Shri Mukund Ram, Civil an Motor Driver (Ordinary Grade) from H.Q. CWE, Ranchi to CE, Dipatoli, Ranchi without following the 'guidelines for Management of Gr. C & D posts of MES Aug., 2007 and stoppage/denial/ stoppage of his wages etc. are neither legal nor justified. Therefore the workman petitioner is entitled to his reinstatement with due wages with consequential relief as per now afresh Order of the H.Q. Central Command concerned over it.

The Management is directed to implement the Award within two months from the date of its receipt following the publication of it in the Official Gazetted by the Government of India, New Delhi.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 774.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कृषि विद्यून केन्द्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/23 का 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/12/2014 को प्राप्त हुआ था।

[सं॰ एल-40011/17/2004-आई आर (डी यू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 774.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-2/ 23 of 2005) of the Central Government Industrial Tribunal/ Labour Court No.II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Ltd. and their workmen, which was received by the Central Government on 05/02/2014.

[No. L-40011/17/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**Present:**

K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/23 of 2005**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHARAT SANCHAR NIGAM LTD.**

The Telecom District Manager
BSNL
At Sawantwadi
Sindhudurg
M.S.

AND

THEIR WORKMEN,
The Vice President
Nhava Sheva Port & General Workers' Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon
Mumbai-400 010.

**APPEARANCES:**

FOR THE EMPLOYER : Mrs. Neeta Masurkar, Advocate.

FOR THE WORKMAN : Mr. J.H. Sawant, Advocate,

Mumbai, dated the 11th November, 2013.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No. L-40011/17/2004-IR (DU), dated 06.12.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the Telecom District Manager, BSNL, Sindhudurg at Sawantwadi in not regularizing the service of Sh. Umesh L. Hajare, Driver is legal and justified? If not to what relief the workman is entitled for?"

2. After receipt of the reference, notices were issued to both the parties. I response to the notice, second party union filed its Statement of Claim at Ex-7. According to the union Workman Shri Umesh L. Hajare is serving with the first party since 29/08/2001 as Driver. He is attending his duties which are of permanent nature. He was selected for the post of Driver after ascertaining his eligibility qualification of his post of driver. His work is satisfactory.

As provided under Industrial Employment (Standing Orders) Act, 1946 as well as principle of equity he is permanent workman. However the management has deprived him from giving the status and privilege of permanent workman. The management is thus guilty of unfair labour practice under I.D. Act. The first party is paying the wages to the workman at a very low rate. They are also not giving other benefits in the nature of social security measures including the benefit of provident fund, insurance, leave, bonus, medical treatment etc. Other workers including Shri Margaokar have been given permanency in the employment to the post of Driver. Whereas the same benefit and pay scale is not given to the workman who is discharging the same duties. He has requested the management. Ultimately he raised industrial dispute before ALC (C). However, the conciliation failed. Therefore ALC(C) made a report of Labour Ministry. Labour Ministry has sent the dispute to this Tribunal. The union therefore prays for declaration that action of the management in not regularising is illegal. He also prays that direction be given to the management to regularise the service of the workman as a permanent employee of the management in the capacity of Driver in the pay scale of Rs. 3200-4900 right from 29/08/2001 with all consequential benefits.

3. The first party resisted the statement of claim *vide* its Written Statement at Ex-12. According to them the union is not a registered union. The workman was also not member of the said union at the relevant time. The first party is Government undertaking. Therefore the reference is not tenable. The workman under reference was engagd for a short period for hourly driving assistance on various intermittent occasions at agreed price. It was service contract to a casual worker. Therefore the reference is not tenable and the workman is not entitled for regularisation. The dispute does not come under Section 2(k) of I.D. Act. The first party is Government of India undertaking. There is total ban imposed by Government for new recruitment since 1982. Therefore the Court cannot issue direction to recruit or regularise the services of the second party workman. The second party is not workman as defined under Section 2(s) of I.D. Act. He cannot be regularised for want of facing eligibility criteria. He was not possessing the same when he was engaged. An understanding was given to him that his job was of temporary nature. Therefore, he is not entitled to claim regularisation. His employment was occasional engagement without following the recruitment rules. It would amount to back door entry. Therefore, his service cannot be regularised.

4. His appointment was not on regular basis. BSNL has framed recruitment rules for the post of regular Driver to fill up 50% of the total vacancy and remaining are to be filled up by promotion by the persons belonging to Group C & D. For all these reasons services of the workman cannot be regularised and he is not entitled for permanent employment therefore they pray that the reference be dismissed with cost.

5. Second party filed their rejoinder at Ex-16 reiterating the contentions taken in their statement of claim.

6. Following are the issues for my determination. I record my fidnings thereon for the reasons to follow:

| Sr. No. | Issues | Findings |
|---|---|---|
| 1. | Whether the second party is a 'workman' and whether there exist employer-employee relationship between them? | Yes. |
| 2. | Whether there exists an industrial dispute? | Yes. |
| 3. | Whether the services of the workman under reference can be regularised as permanent workmen? | Yes. |

**REASONS**

**Issue No. 1 & 2:—**

7. As both these issues are interlinked, in order to avoid repetition of discussion they are discussed and decided simultaneously. On the point of *inter-se* relationship the first party contended that the workman is not their employee. Therefore according to them, neither he is workman nor there exist industrial dispute. According to them the second party workman was engaged as and when required for and on hourly basis as a daily wager Driver. They have also contended that the workman was engaged as contract worker. Therefore there exists no employer-employee relationship between them. It is further contended that the workman was not recruited by following the recruitment process prescribed therefor. Therefore neither he can be called employee of the first party not can be absorbed in the service. In support of her argument the Ld. adv. for the first party resorted to Apex Court ruling in Secretary State of Karnataka & Ors. *V/s.* Uma Devi & Ors. (2006) 4 SCC 1 wherein para 34 of the judgement on the point the Hon'ble Court observed that;

> "Therefore consistent with the scheme for public employment, this Court while laying down the law has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his

term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

8. The Ld. adv. for the first party also resorted to another Supreme Court ruling on the point in Accounts Officer (A and I) APSRTC & Ors. *V/s.* K.V. Ramana & Ors. AIR 2007 SC 1166 wherein the Hon'ble Court in para 7 of the judgement observed that:

"Even if contract labourers or casual workers or adhoc employees have worked for a long period, they cannot be regularised dehors the rules for selection as has been held in Uma Devi's case."

9. The Ld. adv. for the first party also cited another Apex Court ruling in B.S. Minhas *V/s.* Indian Statistical Institute (1983) 4 SCC 582 wherein on the point the Hon'ble Court observed that:

*"If the appointment itself is in infraction of the rules or if it is in violations of the provision of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment."*

10. The Ld. adv. for the first party also cited another Apex Court ruling in B.N. Nagarajan & Ors. *V/s.* State of Karnataka & Ors. AIR 1979 SC 1676 wherein the Hon'ble Court on the point of regularisation held that, when rules framed under Article 209 of the Constitution of India are enforced, no regularisation is permissible in exericse of executive powers under Article 167 of the constitution in contravention of the Rules. The Hon'ble Court in this respect further held that, only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularised. The Ld. adv. further argued that once it is held that the workman is not employee of the first party, irresistible conclusion that follows is that, the Tribunal had no jurisdiction to entertain this dispute and the same deserves to be dismissed.

11. In this respect the Ld. adv. for the second party submitted that, the workman was called for and selected for the post of Driver after ascertaining his eligibility and qualification for the said post. According to him he was appointed *w.e.f.* 29/08/2001 and since then he was driving the vehicles of the first pary. The Ld. adv. further submitted that the workman is very poor person and working sincerely with the first party for a meagre amount of wages. The workman has contended in para 8 of his cross examination that advertisement was published, mentioning about new vehicle and requirement of a new driver for the said vehicle. He further says that he applied with the first party as per the said advertisement. The Ld. adv. pointed out that the workman has neither maintained the o/c of the application nor kept with him the paper of advertisement. That does not mean that he was not recruited and appointed for the post of driver. In his cross examination in para 8 of Ex-23 the workman has also contended that driving test was taken while selecting him.

12. In this respect the Ld. adv. for second party pointed out that, the workman has produced the log book of the vehicle to show that he has worked with the first party as a Driver since 2001 continuosly. The Ld. adv. pointed out that till 2004 the workman was working as a direct employee of the first party. In 2004 the first party introduced contractor. However, the workman has denied the suggestion that he was simply contract worker of Anand Shraddha Contractor. In this respect the Ld. adv. submitted that the first party who is a Govt. undertaking is taking disadvantage of poverty and ignorance of the poor people. He submitted that there was advertisement. In response thereto workman has applied for the post of Driver. He was called for interview. His driving test was taken. He was selected and appointed as a Driver. Due to poverty and ignorance neither he maintained any document nor first party has given any document to him. In this respect I would like to point out that the plea and evidence of the second party is consistent. As against this the case of the first party is not consistent. It is pleaded in written statement that the second party workman was engaged on hourly and as and when required basis. They also contended that since 2004 the workman is a contract worker. In his cross examination at Ex-23 it was suggested that he has not worked since 2001 continuously. The workman has denied the said suggestion. In his cross examination the workman says that driving test was taken before selecting him. He further says that he has no proof on that point.

13. In this respect I would like to point out that while appointing a technical person like Driver, it is quite obvious for the employer to take his driving test. At least driver is not expected to be appointed without driving test. The workman is poor and poorly literate person, who was working with the first party for a very meagre amount to meet the two ends. He is working as a Driver since 2001.

From his evidence and the reply in his cross examination it appears that he was selected by the competent authority as a Driver and was working with the first party since 2001. Neither any appointment order was given to him nor he has maintained any document except the copy of log book. There is no reason to doubt the copy of log book the workman has produced, to show that he was working with the first party. In the circumstances it cannot be said that the workman was engaged on hourly basis and as and when required for. It appears that there was advertisement. The workman had applied and was called for. His interview and driving test was taken. After examing his capability as a driver, he was appointed in the year 2001. It appears that after 2003 the first party seems to have played mischief and called tenders and since 2004 the workman was shown as a contract worker. Apparently it is seen that the service contract was bogus and mere camouflage to deprive the workman from getting the benefit of permanency. It amount to unfair labour practice by the management. Furthermore the workman has worked continuously for more than 240 days in a calendar year and his services cannot be terminated without following the procedure laid down under Section 25 F of the Industrial Disputes Act. He gets protection of 25F of I.D. Act. The management has not followed the conditions laid down thereunder.

14. In the circumstances I hold that the rulings referred herein above by the Id. adv. of the first party are not attracted to the set of facts of the present case as it is seen that the workman was duly appointed by the first party. In case any irregularity it would not come in his way as has been observed by Hon'ble court in the last ruling referred here in above.

15. It appears that the officials of the first party have taken disadvantage of the need, ignorance and poverty of the workman. It is exploitation of poor class, as workman was working for meagre amount to meet the two ends and it is for years together. It is one of the reasons, poor becoming poorer in our country. Recently Hon'ble Apex court has also taken serious note of such type of exploitation of poor class in our country. On the point the ld. adv. for the second party referred the said Apex Court ruling in Bhilwara Dugdh Utpadhak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 (SC) wherein the Hon'ble Court has taken care of all such circumstances and observed that:

"Labour Statutes were meant to protect the employees/workman because it was realised that the employers and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of workmen under various labour statutes by showing that the concern workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees. When infact they are doing the work of regular employees. This court cannot countenance such practice anymore. Globalisation/ liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

16. In the case at hand the version of the first party is unacceptable that the workman was casual worker engaged on hourly and as and when required basis. The version of the first party is also not acceptable that the workman was a contract worker since 2004. It appears that the workman is working with the first party as a Driver since 2001. Though he was selected and appointed as Driver they had not given him the wages of the regular driver. It cannot be said that he was appointed without following the procedure. He had worked for about 3 years for meagre amount. The work of Driver cannot be said casual or temporary. It is work of permanent nature. The workman says in his evidence that there was advertisement. He had applied and was called for interview. His driving test was taken there after he was selected for the post. There is no reason to discard the version of the workman, especially as he has worked for more than 3 years. In the circumstances I hold that the workman was recruited by the first party as a Driver. He had worked continuously for about 3 years with the first party. In the light of above Apex Court ruling I hold that the workman is entitled to be regularised in the service. Accordingly I decide the issue No. 1 in the affirmative that the second party is a workman and there exist employer employees relationship between the parties. As a result I also decide the issue No. 2 in the affirmative that, there exist industrial dispute. In the light of the above discussion I also decide issue No. 3 in the affirmative that, the workman is entitled to be regularised in the service of the first party as driver. Thus I pass the following order.

**ORDER**

The reference is allowed with no order as to cost.

1. The action of the management in not regularising the services of the workman is hereby declared illegal and improper.

2. The management is directed to regularise the services of workman after the probation period of 2 years from the date of his initial date of appointment on 29/08/2001 and give him pay and allowances at par with regular employees with all consequential benefits.

3. Management is directed to pay the difference in pay and allowance from the date of his regularisation *i.e.* from 28/08/2003 till this date.

Dated : 11.11.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 775.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/25 का 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40011/19/2004-आई आर (डी यू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 775.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT-2/25 of 2005) of the Central Government Industrial Tribunal/Labour Court No.II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Ltd. and their workmen, which was received by the Central Government on 05/02/2014.

[No. L-40011/19/2004-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT**
K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/25 of 2005**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHARAT SANCHAR NIGAM LTD.**

The Telecom District Manager
BSNL
At Sawantwadi
Sindhudurg
M.S.

**AND**

**THEIR WORKMEN,**

The Vice President
Nhava Sheva Port & General Workers's Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon
Mumbai-400 010.

**APPEARANCES:**

For The Employer : Mrs. Neeta Masurkar, Advocate
For The Workman : Mr. J.H. Sawant, Advocate

Mumbai, dated the 11th November, 2013.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No. L-40011/19/2004-IR (DU), dated 06.12.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the Telecom District Manager, BSNL, Sindhudurg at Sawantwadi in not regularizing the service of Sh. Anand Vasudeo Parab, Driver is legal and justified? If not to what relief the workman is entitled for?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union filed its Statement of Claim at Ex-7. According to the union Workman Shri Anand Vasudeo Pareb is serving with the first party since 22/07/2002 as Driver. He is attending his duties which are of permanenet nature. He was selected for the post of Driver after ascertaining his eligibility qualification of his post as driver. His work is satisfactory. As provided under Industrial Employment (Standing Orders) Act 1946 as well as principle of equity he is permanent workman. However the management has deprived him from giving the status and privilege of permanent workman. The management is thus guilty of unfair labour practice under I.D. Act. The first party is paying the wages to the workman at a very low rate. They are also not giving other benefits in the nature of social security measures including the benefit of provident fund, insurance, leave, bonus, medical treatment etc. Other workers including Shri Margaonkar have been given permanency in the employment to the post of Driver. Whereas the same benefit and pay scale is not given to the workman who is discharging the same duties. He has requested the management. Ultimately he raised industrail dispute before ALC (C). However the conciliation failed. Therefore ALC(C) made a report of Labour Ministry. Labour Ministry has sent the dispute to this Tribunal. The union therefore prays for declaration that action of the management in not regularising is illegal. He also prays that direction be given to the management to regularise the service of the workman as a permanent employee of the management in the capacity of Driver in the pay scale of Rs. 3200-4900 right from 27/07/2001 with all consequential benefits.

3. The first party resisted the statement of claim *vide* its Written Statement at Ex-12. According to them the union is not a registered union. The workman was also not member of the said union at the relevant time. The first party is Government undertaking. Therefore the reference is not tenable. The workman under reference was engagd for a short period for hourly driving assistance on various

intermittent occasions at agreed price. if was service contract to a casual worker. Therefore the reference is not tenable and the workman is not entitled for regularisation. The dispute does not come under Section 2(k) of I.D. Act. The first party is Government of India undertaking. There is total ban imposed by Government for new recruitment since 1982. Therefore the Court cannot issue direction to recruit or regularise the services of the second party workman. The second party is not workman as defined under Section 2(s) of I.D. Act. He cannot be regularised for want of facing eligibility criteria. He was not possessing the same when he was engaged. An understanding was given to him that his job was of temporary nature. Therefore he is not entitled to claim regularisation. His employment was occasional engagement without following the recruitment rules. It would amount to back door entry. Therefore his service cannot be regularised.

4. His appointment was not on regular basis. BSNL has framed recruitment rules for the post of regular Driver to fill up 50% of the total vacancy and remaining are to be filled up by promotion by the persons belonging to Group C & D. For all these reasons services of the workman cannot be regularised and he is not entitled for permanent employment therefore they pray that the reference be dismissed with cost.

5. Second party filed their rejoinder at Ex-16 reiterating the contentions taken in their statement of claim.

6. Following are the issues for my determination. I record my fidnings thereon for the reasons to follow:

| Sr. No. | Issues | Findings |
|---|---|---|
| 1. | Whether the second party is a 'workman' and whether there exist employer-employee relationship between them? | Yes. |
| 2. | Whether there exists an industrial dispute? | Yes. |
| 3. | Whether the services of the workman under reference can be regularised as permanent workmen? | Yes. |

**REASONS**

**Issue No. 1 & 2:—**

7. As both these issues are interlinked, in order to avoid repetition of discussion they are discussed and decided simultaneously. On the point of *inter-se* relationship the first party contended that the workman is not their employee. Therefore according to them, neither he is workman non there exist industrial dispute. According to them the second party workman was engaged as and when required for and on hourly basis as a daily wager Driver. They have also contended that the workman was engaged as contract worker. Therefore there exists no employer-employee relationship between them. It is further contended that the workman was not recruited by following the recruitment process prescribed therefor. Therefore neither he can be called employee of the first party non can be absorbed in the service. In support of her argument the Id. adv. for the first party resorted to Apex Court ruling in Secretary State of Karnataka & Ors. *V/s.* Uma Devi & Ors. (2006) 4 SCC 1 where in para 34 of the judgement on the point the Hon'ble Court observed that;

> "Therefore consistent with the scheme for public employment, this Court while laying down the law has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

8. The Ld. adv. for the first party also resorted to another Supreme Court ruling on the point in Accounts Officer (A and I) APSRTC & Ors. *V/s.* K.V. Ramana & Ors. AIR 2007 SC 1166 wherein the Hon'ble Court in para 7 of the judgement observed that:

> "Even if contract labourers or casual workers or adhoc employees have worked for a long period, they cannot be regularised dehors the rules for selection as has been held in Uma Devi's case."

9. The Ld. adv. for the first party also cited another Apex Court ruling in B.S. Minhas *V/s.* Indian Statistical Institute (1983) 4 SCC 582 wherein on the point the Hon'ble Court observed that:

> "If the appointment itself is in infraction of the rules or if it is in violations of the provision of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or

manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment."

10. The Ld. adv. for the first party also cited another Apex Court ruling in B.N. Nagarajan & Ors. *V/s.* State of Karnataka & Ors. AIR 1979 SC 1676 wherein the Hon'ble Court on the point of regularisation held that, when rules framed under Article 209 of the Constitution of India are enforced, no regularisation is permissible in exercise of executive powers under Article 167 of the constitution in contravention of the Rules. The Hon'ble Court in this respect further held that, only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularised. The Ld. adv. further argued that once it is held that the workman is not employee of the first party, irresistible conclusion that follows is that, the Tribunal had no jurisdiction to entertain this dispute and the same deserves to be dismissed.

11. In this respect the Ld. adv. for the second party submitted that, the workman was called for and selected for the post of Driver after ascertaining his eligibility and qualification for the said post. According to him he was appointed *w.e.f.* 22/07/2002 and since then he was driving the vehicles of the first pary. The Id. adv. further submitted that the workman is very poor person and working sincerely with the first party for a meagre amount of wages. The workman has contended in para 8 of his cross examination that advertisement was published, mentioning about new vehicle and requirement of a new driver for the said vehicle. He further says that he applied with the first party as per the said advertisement. The Id. adv. pointed out that the workman has neither maintained the o/c of the application nor kept with him the paper of advertisement. That does not mean that he was not recruited and appointed for the post of driver. In his cross examination in para 8 of Ex-23 the workman has also contended that driving test was taken while selecting him.

12. In this respect the Ld. adv. for second party pointed out that, the workman has produced the log book of the vehicle to show that he has worked with the first party as a Driver since 2002 continuously. The Id. adv. pointed out that till 2004 the workman was working as a direct employee of the first party. In 2004 the first party introduced contractor. However the workman has denied the suggestion that he was simply contract worker of Anand Shraddha Contractor. In this respect the Id. adv. submitted that the first party who is a Govt. undertaking is taking disadvantage of poverty and ignorance of the poor people. He submitted that there was advertisement. In response thereto workman has applied for the post of Driver. He was called for interview. His driving test was taken. He was selected and appointed as a Driver. Due to poverty and ignorance neither he maintained any document nor first party has given any document to him. In this respect I would like to point out that the plea and evidence of the second party is consistent. As against this the case of the first party is not consistent. It is pleaded in written statement that the second party workman was engaged on hourly and as and when required basis. They also contended that since 2004 the workman is a contract worker. In his cross examination at Ex-23 it was suggested that he has not worked since 2002 continuously. The workman has denied the said suggestion. In his cross examination the workman says that driving test was taken before selecting him. He further says that he has no proof on that point.

13. In this respect I would like to point out that while appointing a technical person like Driver, it is quite obvious for the employer to take his driving test. At least driver is not expected to be appointed without driving test. The workman is poor and poorly literate person, who was working with the first party for a very meagre amount to meet the two ends. He is working as a Driver since 2002. From his evidence and the reply in his cross examination it appears that he was selected by the competent authority as a Driver and was working with the first party since 2002. Neither any appointment order was given to him nor he has maintained any document except the copy of log book. There is no reason to doubt the copy of log book the workman has produced, to show that he was working with the first party. In the circumstances it cannot be said that the workman was engaged on hourly basis and as and when required for. It appears that there was advertisement. The workman had applied and was called for. His interview and driving test was taken. After examining his capability as a driver, he was appointed in the year 2002. It appears that after 2003 the first party seems to have played mischief and called tenders and since 2004 the workman was shown as a contract worker. Apparently it is seen that the evidence contract was bogus and mere camouflage to deprive the workman from getting the benefit of permanency. It amout to unfair labour practice by the management. Furthermore the workman has worked continuously for more than 240 days in a calendar year and his services cannot be terminated without following the procedure laid down under Section 25F of the Industrial Disputes Act. He gets protection of 25F of I.D. Act. The management has not followed the conditions laid down thereunder.

14. In the circumstances I hold that the rulings referred herein above by the Id. adv. of the first pary are not attracted to the set of facts of the present case as it is seen that the workman was duly appointed by the first party. In case any irregularity it would not come in his way as has been observed by Hon'ble court in the last ruling referred here in above.

15. It appears that the officials of the first party have taken disadvantage of the need, ignorance and poverty of

the workman. It is exploitation of poor class, as workman was working for meagre amount to meet the two ends and it is for years together. It is one of the reasons, poor becoming poorer in our country. Recently Hon'ble Apex court has also taken serious note of such type of exploitation of poor class in our country. On the point the Id. adv. for the second party referred the said Apex Court ruling in Bhilwara Dugdh Utpadhak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 (SC) wherein the Hon'ble Court has taken care of all such circumstances and observed that;

> *"Labour Statutes were meant to protect the employees/workman because it was realised that the employers and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of workman under various labour statutes by showing that the concern workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees. When infact that are doing the work of regular employees. This court cannot countenance such practice anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."*

16. In the case at hand the version of the first party is unacceptable that the workman was casual worker engaged on hourly and as and when required basis. The version of the first party is also not acceptable that the workman was a contract worker since 2004. It appears that the workman is working with the first party as a Driver since 2002. Though he was selected and appointed as Driver they had not given him the wage of the regular driver. It cannot be said that he was appointed without following the procedure. He had worked for about 2 years for meagre amount. The work of Driver cannot be said casual or temporary. It is work of permanent nature. The workman says in his evidence that there was advertisement. He had applied and was called for interview. His driving test was taken there after he was selected for the post. There is no reason to discard the version of the workman, especially as he has worked for more than 2 years. In the circumstances I hold that the workman was recruited by the first party as a Driver. He had worked continuously for about 2 years with the first party. In the light of above Apex Court ruling I hold that the workman is entitled to be regularised in the service. Accordingly I decide the issue No. 1 in the affirmative that the second party is a workman and there exist employer-employee relationship between the parties. As a result I also decide the issue No. 2 in the affirmative that, there exist industrial dispute. In the light of the above discussion I also decide issue No. 3 in the affirmative that, the workman is entitled to be regularised in the service of the first party as driver. Thus I pass the following order.

**ORDER**

The reference is allowed with no order as to cost.

1. The action of the management in not regularising the services of the workman is hereby declared illegal and improper.

2. The management is directed to regularise the services of workman after the probation period of 2 years from the date of his initial date of appointment on 22/07/2002 and give him pay and allowances at par with regular employees with all consequential benefits.

3. Management is directed to pay the difference in pay and allowance from the date of his regularisation *i.e.* from 21/07/2004 till this date.

Date: 11/11/2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 776.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/24 का 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40011/18/2004-आई आर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 776.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT-2/24 of 2005) of the Central Government Industrial Tribunal/Labour Court No.II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Ltd. and their workmen, which was received by the Central Government on 05/02/2014.

[No. L-40011/18/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT :**

K. B. KATAKE B.A. L.L.M. , Presiding Officer

**REFERENCE NO. CGIT-2/24 of 2005**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF BHARAT SANCHAR NIGAM LTD.**

The Telecom District Manager
BSNL
At Sawantwadi
Sindhudurg
(M.S.)

**AND**

**THEIR WORKMEN,**

The Vice President
Nhava Sheva Port & General Workers's Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon
Mumbai-400 010.

**APPEARANCES:**

FOR THE EMPLOYER : Mrs. Neeta Masurkar, Advocate

FOR THE WORKMAN : Mr. J.H. Sawant, Advocate,

Mumbai, dated the 11th November, 2013.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No. L-40011/18/2004-IR (DU), dated 06.12.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the Telecom District Manager, BSNL, Sindhudurg at Sawantwadi in not regularizing the service of Shankar P. Mhapankar, Driver is legal and justified? If not to what relief the workman is entitled for?"*

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union filed its Statement of Claim at Ex-7. According to the union Workman Shri Sankar P. Mhapankar is serving with the first party since 4/06/1996 as Driver. He was selected for the post of Driver after ascertaining his eligibility and qualification of his post as driver. He is attending his duties of permanent nature. His work was satisfactory. As provided under Industrial Employment (Standing Orders) Act 1946 as well as principle of equity he is permanent workman. However the management has deprived him from giving the status and privilege of permanent workman. The management is thus guilty of unfair labour practice under I.D. Act. The first party is paying the wages to the workman at a very low rate. They are also not giving other benefits in the nature of social security measures including the benefit of provident fund, insurance, leave, bonus, medical treatment etc. Other workers including Shri Margaokar have been given permanency in the employment to the post of Driver. Whereas the same benefit and pay scale is not given to the workman who is discharging the same duties. He has requested the management. Ultimately he raised industrial dispute before ALC (C). However the conciliation failed. Therefore ALC(C) made a report of Labour Ministry. The Central Labour Ministry has sent the dispute to this Tribunal. The union therefore prays for declaration that action of the management in not regularising is illegal. He also prays that direction to the management to regularise the service of the workman as a permanent employee of the management Driver in the pay scale of Rs. 3200-4900 right from 4/6/1996 with all consequential benefits.

3. The first party resisted the statement of claim *vide* its Written Statement at Ex-12. According to them the union is not a registered union. The workman was also not member of the said union at the relevant time. The first party is Government undertaking. Therefore the reference is not tenable. The workman under reference was engaged for a short period for hourly driving assistance on various intermittent occasions at agreed price. it was service contract to a casual worker. Therefore the reference is not tenable and the workman is not entitled for regularisation. The dispute does not come under Section 2(k) of I.D. Act. The first party is Government of India undertaking. There is total ban imposed by Government for new recruitment since 1982. Therefore the Court cannot issue direction to recruit or regularise the services of the second party workman. The second party is not workman as defined under Section 2(s) of I.D. Act. He cannot be regularised for want of eligibility criteria. He was not possessing the same when he was engaged. An understanding was given to him that his job was of temporary nature. Therefore he is not entitled to claim regularisation. His employment was occasional engagement without following the recruitment rules. It would amount to back door entry. Therefore his service cannot be regularised.

4. His appointment was not on regular basis. BSNL has framed recruitment rules for the post of regular Driver to fill up 50% of the total vacancy and remaining are to be filled up by promotion from the employees belonging to Group C & D. For all these reasons services of the workman cannot be regularised and he is not entitled for permanent employment therefore they pray that the reference be dismissed with cost.

5. Second party filed their rejoinder at Ex-16 reiterating the contentions taken in their statement of claim and denied the contents in the W.S.

6. Following are the issues for my determination. I record my fidnings thereon for the reasons to follow:

| Sr. No. | Issues | Findings |
|---|---|---|
| 1. | Whether the second party is a 'workman' and whether there exist employer-employee relationship between them? | Yes. |
| 2. | Whether there exists an industrial dispute? | Yes. |
| 3. | Whether the services of the workman under reference can be regularised as permanent workmen? | Yes. |

**REASONS**

**Issue No. 1 & 2:—**

7. As both these issues are interlinked, in order to avoid repetition of discussion they are discussed and decided simultaneously. On the point of *inter-se* relationship the first party contended that the workman is not their employee. Therefore according to them, neither he is workman not there exist industrial dispute. According to them the second party workman was engaged as and when required for and on hourly basis as a daily wager Driver. They have also contended that the workman was engaged as contract worker. Therefore there exists no employer-employee relationship between them. It is further contended that the workman was not recruited by following the recruitment process prescribed therefore. Therefore neither he can be called employee of the first party not can be absorbed in the service. In support of her argument the Id. adv. for the first party resorted to Apex Court ruling in Secretary State of Karnataka & Ors. *V/s.* Uma Devi & Ors. (2006) 4 SCC 1 wherein in para 34 of the judgement on the point the Hon'ble Court observed that;

> *"Therefore consistent with the scheme for public employment, this Court while laying down the law has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment the appointment comes to an end at the end of the contract. If it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."*

8. The Ld. adv. for the first party also resorted to another Supreme Court ruling on the point in Accounts Officer (A and I) APSRTC & Ors. *V/s.* K.V. Ramana & Ors. AIR 2007 SC 1166 wherein the Hon'ble Court in para 7 of the judgement observed that:

> *"Even if contract labourers or casual workers or adhoc employees have worked for a long period, they cannot be regularised dehors the rules for selection as has been held in Uma Devi's case."*

9. The Ld. adv. for the first party also cited another Apex Court ruling in B.S. Minhas *V/s.* Indian Statistical Institute (1983) 4 SCC 582 wherein on the point the Hon'ble Court observed that:

> *"If the appointment itself is in infraction of the rules or if it is in violations of the provision of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment."*

10. The Ld. adv. for the first party also cited another Apex Court ruling in B.N. Nagarajan & Ors. *V/s.* State of Karnataka & Ors. AIR 1979 SC 1676 wherein the Hon'ble Court on the point of regularisation held that, when rules framed under Article 209 of the Constitution of India are enforced, no regularisation is permissible in exericse of executive powers under Article 167 of the constitution in contravention of the Rules. The Hon'ble Court in this respect further held that, only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularised. The Id. adv. further argued that once it is held that the workman is not employee of the first party, irresistible conclusion that follows is that, the Tribunal had no jurisdiction to entertain this dispute and the same deserves to be dismissed.

11. In this respect the Id. adv. for the second party submitted that, the workman was called for and selected for the post of Driver after ascertaining his eligibility and qualification for the said post. According to him he was

appointed *w.e.f.* 4/06/1996 and since then he was driving the vehicles of the first pary. The Id. adv. further submitted that the workman is very poor person and working sincerely with the first party for a meagre amount of wages. The workman has contended in para 8 of his cross examination that advertisement was published, mentioning about new vehicle and requirement of a new driver for the said vehicle. He further says that he applied with the first party as per the said advertisement. The Id. adv. pointed out that the workman has neither maintained the o/c of the application nor kept with him the paper of advertisement. That does not mean that he was not recruited and appointed for the post of driver. In his cross examination in para 8 of Ex-20 the workman has also contended that driving test was taken while selecting him.

12. In this respect the Id. adv. for second party pointed out that, the workman has produced the log book of the vehicle to show that he has worked with the first party as a Driver since 1996 continuously. The Id. adv. pointed out that till 2004 the workman was working as a direct employee of the first party. In 2004 the first party introduced contractor. However the workman has denied the suggestion that he was simply contract worker of Anand Shraddha Contractor. In this respect the Id. adv. submitted that the first party who is a Govt. undertaking is taking disadvantage of poverty and ignorance of the poor people. He submitted that there was advertisement. In response thereto workman has applied for the post of Driver. He was called for interview. His driving test was taken. He was selected and appointed as a Driver. Due to poverty and ignorance neither he maintained any document nor first party has given any document to him. In this respect I would like to point out that the plea and evidence of the second party is consistent. As against this the case of the first party is not consistent. It is pleaded in written statement that the second party workman was engaged on hourly and as and when required basis. They also contended that since 2004 the workman is a contract worker. In his cross examination at Ex-20 it was suggested that he has not worked since 1996 continuously. The workman has denied the said suggestion. In his cross examination the workman says that driving test was taken before selecting him. He further says that he has no proof on that point.

13. In this respect I would like to point out that while appointing a technical person like Driver, it is quite obvious for the employer to take his driving test. At least driver is not expected to be appointed without driving test. The workman is poor and poorly literate person, who was working with the first party for a very meagre amount to meet the two ends. He is working as a Driver since 1996. From his evidence and the reply in his cross examination it appears that he was selected by the competent authority as a Driver and was working with the first party since 1996. Neither any appointment order was given to him nor he has maintained any document except the copy of log book. There is no reason to doubt the copy of log book the workman has produced, to show that he was working with the first party. In the circumstanes it cannot be said that the workman was engaged on hourly basis and as and when required for. It appears that there was advertisement. The workman had applied and was called for. His interview and driving test was taken. After examining his capability as a driver, he was appointed in the year 1996. It appears that after 2003 the first party seems to have played mischief and called tenders and since 2004 the workman was shown as a contract worker. Apparently it is seen that the evidence contract was bogus and mere camouflage to deprive the workman from getting the benefit of permanency. It amount to unfair labour practice by the management. Furthermore the workman has worked continuously for more than 240 days in a calendar year and his services cannot be terminated without following the procedure laid down under Section 25F of the Industrial Disputes Act. He gets protection of 25F of I.D. Act. The management has not followed the conditions laid down thereunder.

14. In the circumstances I hold that the rulings referred herein above by the Id. adv. of the first party are not attracted to the set of facts of the present case as it is seen that the workman was duly appointed by the first party. In case any irregularity it would not come in his way as has been observed by Hon'ble court in the last ruling referred here in above.

15. It appears that the officials of the first party have taken disadvantage of the need, ignorance and poverty of the workman. It is exploitation of poor class, as workman was working for meagre amount to meet the two ends and it is for years together. It is one of the reasons, poor becoming poorer in our country. Recently Hon'ble Apex court has also taken serious note of such type of exploitation of poor class in our country. On the point the Id. adv. for the second party referred the said Apex Court ruling in Bhilwara Dughd Utpadhak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 (SC) wherein the Hon'ble Court has taken care of all such circumstances and observed that;

> *"Labour Statutes were meant to protect the employees/workman because it was realised that the employers and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of workman under various labour statutes by showing that the concern workman are not their employees but are the employees/workman of a contractor, or that they are merely daily wage or short term or casual employees. When infact that are doing the work of regular employees. This court*

*cannot countenance such practice anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."*

16. In the case at hand the version of the first party is unacceptable that the workman was casual worker engaged on hourly and as and when required basis. The version of the first party is also not acceptable that the workman was a contract worker since 2004. It appears that the workman is working with the first party as a Driver since 1996. Though he was selected and appointed as Driver they had not given him the wages of the regular driver. It cannot be said that he was appointed without following the procedure. He had worked for about 8-9 years for meagre amount. The work of Driver cannot be said casual or temporary. It is work of permanent nature. The workman says in his evidence that there was advertisement. He had applied and was called for interview. His driving test was taken there after he was selected for the post. There is no reason to discard the version of the workman, especially as he has worked for more than 8-9 years. In the circumstances I hold that the workman was recruited by the first party as a Driver. He had worked continuously for about 8-9 years with the first party. In the light of above Apex Court ruling I hold that the workman is entitled to be regularised in the service. Accordingly I decide the issue No. 1 in the affirmative that the second party is a workman and there exist employer employees relationship between the parties. As a result I also decide the issue No. 2 in the affirmative that, there exist industrial dispute. In the light of the above discussion I also decide issue No. 3 in the affirmative that, the workman is entitled to be regularised in the service of the first party as driver. Thus I pass the following order.

**ORDER**

The reference is allowed with no order as to cost.

1. The action of the management in not regularising the services of the workman is hereby declared illegal and improper.

2. The management is directed to regularise the services of workman after the probation period of 2 years from the date of his initial date of appointment on 04/06/1996 and give him pay and allowances at par with regular employees with all consequential benefits.

3. Management is directed to pay the difference in pay and allowance from the date of his regularisation *i.e.* from 23/06/1998 till this date.

Date: 11/11/2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 777.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंटल कैंटीन, महानगर टेलीफोन निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (सदर्भ संख्या सीजीआईटी-2/2 of 2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 777.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT-2/2 of 2003) of the Central Government Industrial Tribunal/Labour Court No. II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Departmental Canteen, Mahanagar Telephone Nigam Ltd, and their workman, which was received by the Central Government on 05/02/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT :**

K.B. KATAKE, Presiding Officer

**MISCELLENEOUS APPLN. NO. CGIT-2/2 OF 2003**

**IN**

**Ref. CGIT-2/1 OF 1990**

**PARTIES:—**

Andheri Telephone Exchange
Departmental Canteen
Mahanagar Telephone Nigam Ltd.
Andheri Departmental Canteen
Andheri (W)
Mumbai 400 058 ...Applicant

V/s.

Mr. Ramchandra Moolya
Building No. 44, Room No. 203
Manisha Nagar
Four Bungalow
Versova, Andheri (W)
Mumbai 400 058. ...Opposite Party

**APPEARANCES:**

For the Applicant : Mr. V. Narayanan, Advocate.

For the Opposite Party : Mr. M.B. Anchan, Advocate.

Mumbai, dated the 25th March, 2013.

**JUDGEMENT**

This application is filed by the management of MTNL to set aside the exparte order passed by this Tribunal on 01/10/2002 in Ref. CGIT-2/1 of 1990. According to them, on the date of passing exparte award *i.e.* 1/10/2002, though Ms. Shah, advocate for the management was not present, Mr. G.A. Sawant, JTO was present before the Tribunal and it is mentioned in para 2 of the award that Shri G.A. Sawant had appeared but had disappeared at the time when the matter was taken up for hearing. Applicant management also prays for condonation of delay in filling this application within the period of one month. According to them as their Id counsel required written explanation of Shri G.A. Samant as to what happened when he attended this Tribunal and the same was submitted to him only on 6/5/2003 as he had undergone eye operation. Therefore the applicant prays that delay in filing this application be condoned. They also pray that the *exparte* order be set aside and the reference be taken on board to its original stage.

2. Notices were issued to both the parties and the matter was fixed for say of the opposite party. The opposite party filed his say on the application at Ex-7. According to him the application is misconceived and they prayed to reject the same with cost. Thereafter the matter was fixed for hearing. Today, advocate for the opposite party Union filed an application Ex-16 stating that since the workman had expired and his legal heirs are not interested, the union does not want to pursue the reference. Therefore he prayed to dispose of this application.

3. Since the opposite party does not want to pursue the reference, I think it proper to dispose of the application. Thus I pass the following order.

**ORDER**

The application is disposed of as the opposite party union does not want to pursue the reference.

Date: 25.03.2013 K.B. KATAKE, Presiding Officer/Judge

नई दिल्ली, 12 फरवरी, 2014

**का॰आ॰ 778.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (सदर्भ संख्या सीजीआईटी-2/51 का 2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं. एल-42012/47/2007-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th February, 2014

**S.O. 778.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT-2/51 of 2007) of the Central Government Industrial Tribunal/Labour Court No. II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Jawahar Navodaya Vidyalaya, and their workman, which was received by the Central Government on 05/02/2014.

[No. L-42012/47/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT :**

K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/51 OF 2007**

Employers in Relation to the Management of Jawahar Navodaya Vidyalaya

The Principal
Jawahar Navodaya Vidyalaya
At & Post Khedgaon
Tal. Dindori
Nasik (MS).

AND

THEIR WORKMAN

Shri Deoram Pandurang Kawale
Village Bhopegaon
Tal. Dindori
Nasik (MS).

**Appearances:**

For the Employer : Ms. Neeta Masurkar, Advocate.

For the Workman : Ms. Sheetal V. Kanakia, Advocate.

Mumbai, dated the 15th July, 2013

**AWARD**

1. The Government of India, Ministry of Labour & Employment by its Order No. L-42012/47/2007 - IR (DU) dated 12/10/2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "*Whether the action of the management of Jawaharlal Navodaya Vidyalaya, Nashik in terminating the services of their workman*

*Shri Deoram Pandurang Kawale w.e.f. 27/01/1995 is legal and justified? If not, to what relief the workman is entitled to?"*

2. After receipt of the reference, notices were issued to both the parties. In response to the notice the second party workman filed his statement of claim at Ex-5. According to the workman he was appointed by the first party as Watchman he was (Chowkidar) *w.e.f.* 17/03/1992. He was doing his duties in the establishment of School. His consolidated salary was Rs. 600 p.m. His services were quite satisfactory and without blemish and no complaint was made against him by anybody. However the first party has terminated his services on and around 04/07/1994 without any notice, therefore, workman approached Dy. Labour Commissioner, Nashik. Settlement had taken place and again he was taken back in the employment of first party since 23/11/1994. He served there upto 27/01/1995. However they did not pay him salary, therefore the workman made an application dated 11/05/1995 to the authorities for payment of his salary. However they did not pay his dues. They terminated his services from 27/01/95 without any reason and without service of any notice. As he was not allowed to join his duties, he served the first party with legal notice dated 28/07/1995 through his advocate. The first party sent their reply dated 14/08/1995. The workman denies all the allegations therein Workman has also filed complaint to ALC (C) Mumbai stating his grievance. On his report the Labour Ministry sent the reference to this Tribunal. The workman submits that his services were illegally terminated. Therefore he prays for declaration that his termination from services be declared illegal and bad in law. He also prays to direct the first party to reinstate him in the services with continuity of service and full back-wages and consequential benefits. He also prays for cost of the litigation.

3. The first party management resisted the statement of claim vide its written statement at Ex-8. According to the first party there is inordinate and unexplained delay of 13 years in raising the industrial dispute. Therefore the reference is hit by delay and laches and deserves to be dismissed. It is further contended that the engagement of second party was for a specific short intermediate period on part time daily wages. Neither he was never taken on the establishment of first party nor question of termination of his service arose as he was a mere daily wager. The first party has fully paid the wages of second party of the period of which he had worked with it. Neither the second party was recruited by following the recruitment process, nor he was employee of the first party. Therefore services of second party who had worked for a short period as a daily wager cannot be regularized. The Apex Court has laid down the law to that effect. They denied that second party was appointed as Watchman (Chowkidar) at Jawahar Navodaya Vidhyalaya *w.e.f.* 17/03/1992. They denied that he was doing his duties in the establishment of the School and his consolidated salary was Rs. 600/- p.m. They denied that services of second party were satisfactory and unblemished. According to them second party was engaged just as a stop gap arrangement. His services came to an end on appointment of regular person. They denied that on termination of his services on 09/07/1994 he approached Dy. Labour Commissioner, Nashik. They denied that there was settlement and he was taken in the employment of the School since 23/11/1994. They denied that they did not pay salary to the second party, therefore he made application to the authorities of the School for his salary and dues. They denied that his services were terminated orally and illegally on 27/01/1995 and that since then he was not allowed to sign the muster roll. They denied all the contents in the statement of claim and pray that the reference deserves to be dismissed.

4. Following are the issues framed by my Ld. Predecessor at Ex-12 for my determination. I record my findings thereon for the reasons to follow:

| Sr. No. | Issues | Findings |
|---|---|---|
| 1. | Is this reference tenable? | Yes |
| 2. | Whether the second party establishes his relationship with party? | Yes |
| 3. | Whether the Claim of the workman deserves to be rejected for inordinate delay and latchces? | No |
| 4. | Whether alleged termination is legal? | No |
| 5. | Is 2nd party entitled for any relief? | As per order below |
| 6. | What Order? | As per order below |

**REASONS**

**Issues Nos. 1 & 2**:—

5. It is the case of the first party that the second party workman was not their employee therefore the reference is not tenable. It is the case of the first party that, second party workman was never appointed as a Night Watchman as he has been alleged in the statement of claim and in the affidavit. According to them he was a daily wager engaged for a very short period by way of stop gap arrangement. In this respect it is pertinent to note that the fact is not disputed that the second party has worked as a night watchman. According to the second party he has worked as night watchman since 17/03/1992 till 04/07/1994. According to him thereafter his service was terminated and as per the direction of Dy. Labour Commissioner, Nashik matter was settled and he was reinstated on 23/11/1994. However they did not pay his salary and again orally terminated his services from 27/01/1995. In this respect I would like to point out that though the first party has denied

that workman had worked with them from March 1992 to July 1994 as a night watchman, they have not given any specific period during which the second party was working with them. As they have not denied that the second party had worked with them as a night watchman, may as a daily wager or temporary employee. Therefore the specific period given by the workman for which he had worked can squarely be accepted. In short the second party workman had worked with the first party as a night watchman from March 1992 to July 1994. He may be daily wager or casual employee. The fact remains that he was employee of the first party for the above referred period. In the circumstances version of the first party is devoid of merit that the second party was not their employee and the reference is not tenable. Accordingly I decide these issues No. 1 & 2 in the affirmative.

**Issue No. 3**:—

6.They have further contended that, there is inordinate delay of 13 years in raising the industrial dispute. Therefore the reference is hit by delay and laches. In this respect fact is not disputed that the workman was discharged or discontinued from service since January 1995 and the workman has raised the industrial dispute at a very late stage and the Order of Reference is dated 12/10/2007. According to the first party there is delay of 13 years as the workman has raised the dispute at a very late stage. In this respect according to the workman after his illegal termination he served with the first party a legal notice 28/7/1995 and the first party replied the same by its reply dated 14.08.1995. In his additional affidavit at Ex-14 the second party further contended that in the same year *i.e.* in the year 1995 he approached the School Tribunal Nahsik by filing Appeal no. 41/1995. The first party has raised dispute of jurisdiction. The School Tribunal decided the point of jurisdiction in favour of the second party. Therefore first party filed a writ petition no. 6014/96 before Hon'ble Bombay High Court. Meanwhile in December 1996 Central Government by notification directed transfer of all pending suit etc. before various courts in respect of employees of Jawahar Navodaya Vidhyalaya to Central Administrative Tribunal. Accordingly the first party was allowed to withdraw the writ petition by its order dated 16/08/2002. By an order dt. 04/10/2004 the School Tribunal Nashik also returned the Appeal memo to the second party for presenting the same before competent authority. The second party filed OA no. 832/2004 before Central Administrative Tribunal, Mumbai for redressal of his grievances. The Tribunal after hearing the parties held that it is not empowered to decided the dispute and directed the second party to approach appropriate Court. Thereafter the second party approached Dy. Labour Commissioner, Nashik and sought for his intervention in the matter. He also directed the second party to approach appropriate authority. Thereafter in October 2005 he made application to Dy. C.L.C., (C) at Mumbai. He referred the matter to Ministry. Thereafter by order dated 12/10/2007 the Ministry sent the reference to this Tribunal. In the circumstances the Ld. adv. for the second party rightly submitted that the delay was caused due to intermediate litigations between the parties.

7. According to the Ld. adv. the second party being a rustic villager and illiterate person could not get proper advice. Therefore he had filed appeal before School Tribunal, then matter was taken to High Court then as per Government Circular it was pending for certain period before Central Administrative Tribunal and finally the matter reached to RLC (C) who sent it to Labour Ministry, Government of India in the year 2007. In the circumstances neither it can be said delay, nor it can be said any deliberation on the part of the second party. In this respect further I would like to point out that for raising the industrial dispute no specific limitation is prescribed in the law. In the circumstances and in the light of the aforesaid history of litigations, I come to the conclusion that though there is delay in sending the reference, the reference is not hit by delay and laches. Accordingly I decide this issue no. 3 in the negative.

**Issue No. 4**:—

8. In this respect according to the first party the workman was engaged as a daily wager for a very short period and by way of stop gap arrangement. Therefore according to them discontinuation of his services would not amount to termination as he was never their employee as such. In this respect as it is discussed in issue no. 1 & 2 above that though first party has admitted that second party had worked as their night watchman, they have not given the specific period for which second party worked for them. On the other hand the first party has vaguely contended in their written statement and affidavit as well that the second party had worked with them for a very short period. As against this the second party has given specific period stating that he had worked with the first party *w.e.f.* 17/03/1992 till 04/07/1994. In the light of vague contention of the first party the specific plea of the second party in respect of the period can be accepted. Furthermore the second party has also produced on record the certified xerox copy of the letter of his appointment dated 08/05/1992 issued by the Principal of the first party. In this respect the first party had raised objection to exhibit this letter. However according to the second party the original letter and other documents were lost while he was travelling in an Auto rickshaw. He had also lodged a police complaint about the same. He has also examined the Special Executive Magistrate who has attested the true copy. As the original document was lost, permission can be granted to produce the secondary evidence. Therefore (Ex-36) the letter of appointment can be exhibited and read in evidence. It shows that the second party was appointed as a Watchman in the establishment of the first party for the pay of Rs. 600 p.m.

9. The other evidence in this respect is that, the workman had given a notice to the first party and the advocate of the

first party replied the same. The said notice reply dated 14/08/1995 sent by first party through their advocate is on record with list Ex-13/4. This reply was sent to the notice of the second party dated 28/07/1995. Though contents in the notice reply are denied by the first party in their pleadings, they have not denied the fact that they received the notice and the same was replied by their advocate. In this notice reply on behalf of the first party it is contended that the second party was engaged as a night watchman on daily wages basis. It was further contended in the notice that he was never discharging his duties satisfactorily and on many occasions he was found sleeping while on duty and remained absent without prior intimation and his behaviour towards ladies staff members was doubtful and he was unnecessarily interfering in the affairs of others etc. In this notice reply it is further contended that putting continuous service of 2 & ½ years does not entitle him to be a permanent employee of the first party and he was not entitled to be reinstated with back wages. In the written statement, law and case law is pleaded unnecessarily. However it is not specifically denied that the workman had not served continuously for more than 2 & ½ years as has been alleged in the statement of claim. In this backdrop from the pleadings and evidence on record it is clear that the workman was engaged by the first party to work as a night watchman and he had worked continuously for more than 240 days in a calendar year.

10. In this respect the Id. adv. for the first party submitted that though the workman had worked more than 240 days he is not entitled to be regularized in service as a permanent employee as his initial appointment was not in accordance with the rules. She pointed out that the workman had admitted in his cross at Ex-14 & 14-A that neither there was any advertisement for the recruitment of watchman, nor he has come through Employment Exchange which is the procedure laid down for recruiting employees in the Government Institutes. Therefore she submitted that the workman cannot claim regularization in the service. In support of his argument, the Id. adv. resorted to Apex Court ruling in Secretary, State of Karnataka & Ors. V/s Uma Devi & Ors. AIR 2006 SC 1806 wherein the Hon'ble Court held that, merely because a temporary employee or casual worker is continued for more than 10 years beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent if the original appointment is made *de hors* rules or the constitutional scheme of public emplpoyment. The Ld. adv. for the first party also cited the following rulings:

(1) State of Haryana & Anr *Vs.*Tilak Raj & Ors. AIR 2003 SC W 3382

(2) Ashwin Kumar V/s. State of Bihar AIR 1997 SC 1628

(3) State of Karnataka V/s. Chandrashekhar 2009 (3) SC ALE 653

(4) C. Balachandran V/s. State of Kerala 2009 3 SCC 79

In all these cases the Hon'ble Court held that, such employees engaged to ad-hoc appointment or back door entry without following the procedure are not entitled to be regularized in the permanent service in the public undertaking.

11. In the case at hand the point is not for regularization in the service. The question before me is whether the termination of the workman is legal and proper? Though such an employee is directed to be reinstated in the service, that does not mean that, he is directed to be regularized in the service. On the point Apex Court ruling can be resorted to in Hindustan Petroleum Corporation Ltd. V/s. Ashok Ranghba Ambre 2008 (2) SCC 717 wherein the Hon'ble Court held that, even though it was held by the Tribunal that the termination is illegal, being in violation of Section 25 F and the employee was ordered to be reinstated and the said order was confirmed by the High Court, he is not entitled to the status of permanent employee, when he was appointed earlier on ad-hoc and temporary basis. Reinstatement does not mean conferring permanent status.

12. In the case at hand from the facts and cirumstances on record it is revealed that the second party workman was temporarily appointed as watchman by way of stop gap arrangement till appointment of permanent night watchman. Neither he was daily wager nor appointed by following procedure for appointment of night watchman. From the above discussions it is also clear that the workman had worked for 2 & $^{1}/_{2}$ years continuously and he was getting monthly pay from the first party. In this back drop I come to the conclusion that, as workman has worked continuously for more than 240 days he was entitled to protection under Section 25-F of the I.D. Act. In short I hold that, though the workman is not entitled for regularization he is well entitled to the protection under Section 25-F of the I.D Act as the management has not followed the procedure for retrenchment. Neither retrenchment notice was served on the workman nor notice pay and retrenchment compensation was paid to him. In the circumstances I hold that the termination of the workman is illegal. Accordingly I decided this issue no. 4 in the negative.

**Issue no. 5**

13. The workman herein has sought for the relief of reinstatement with full back wages. In respect of back wages the Ld. Adv. for the first party submitted that 'no work no pay' is the settled principle of law. Therefore, full back wages cannot be granted to the workman. In respect of reinstatment I would like to point out that, in the above referred Apex Court ruling in the case of Hindustan Petroleum Corporation Ltd. referred (supra), the Hon'ble Court held that, though the workman is reinstated, he cannot be regularized in service as he was appinted without following the procedure prescribed for the appointment as referred herein above. Furthermore in the case at hand the management has contended that they have already filled

up the post of night watchman after following procedure prescribed, therefore, the said post is now not vacant. In the circumstances the management can terminate his services at any time by following the procedure prescribed under Section 25-F of the I.D. Act. Therefore, to avoid complications and further litigations, in the interest of justice, instead of reinstatement I think it proper to direct the first party to pay the retrenchment compensation to the tune of Rs. 50,000 and notice pay Rs. 2,000 as contemplated under Section 25-F of the I.D. Act with interest thereon from the date of his termination till the date of actual payment of the amount. Accordingly I decide this issue and proceed to pass the following order:

**ORDER**

(i) The reference is partly allowed with no order as to cost.

(ii) The termination of workman is hereby declared unjust and illegal.

(iii) Instead of reinstatement, the first party is directed to pay retrenchment compensation to the tune of Rs. 50,000 and notice pay of Rs. 2,000 with interest thereon @ 10% from the date of termination till the date of payment of amount.

Date: 15.07.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 779.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है:

01. शाखा कार्यालय, कर्मचारी राज्य बीमा निगम, मायापुरी, दिल्ली

02. कर्मचारी राज्य बीमा निगम, आदर्श अस्पताल, नामकुम, रांची, झारखंड

03. उप क्षेत्रीय कार्यालय, कर्मचारी राज्य बीमा निगम, जालंधर

[सं॰ ई-11017/1/2006-रा॰भा॰नी॰]
अनिल कुमार खाची, संयुक्त सचिव

New Delhi, the 13th February, 2014

**S.O. 779.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:—

01. Branch Office, Employees' State Insurance Corporation. Mayapuri, Delhi

02. Model Hospital, Employees' State Insurance Corporation, Namkum, Ranchi, Jharkhand

03. Sub Regional Office, Employees' State Insurance Corporation, Jalandhar.

[No. E-11017/1/2006-RBN]
A. K. KHACHI, Jt. Secy.

**नई दिल्ली, 13 फरवरी, 2014**

**का॰आ॰ 780.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेंडेन्ट ऑफ़ पोस्ट ऑफिस्स, डिपार्टमेंट ऑफ़ पोस्ट, जूनागढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या CGITA 58/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/09/2005-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 780.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGITA 58/2005) of the Central Government Industrial Tribunal Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Superintendent of Post Offices, Department of Post, Junagadh and their workman, which was received by the Central Government on 05/02/2014.

[No. L-40012/09/2005-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-2, AHMEDABAD**

**PRESENT :**
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 6th November, 2013

**Reference (CGITA) No. 58/2005**

The Superintendent of Post Offices
Department of Post,
Junagadh Division,
Junagadh-362001 .....First Party

AND

Their Workman
Shri P.P. Aparnath,
R/o Chorvad-362250
At Nagnath Temple,
West Darwaja, Taluka Malia Hatina
Dist.-Junagadh ....Second Party

For the First Party : Shri P.M. Rami, A.G.P. (Labour & Industrial Court)

For the Second Party : None

**AWARD**

The Central Government/Ministry of Labour, New Delhi *vide* its Order No. L-40012/9/2005 - IR(DU) dated 11.07.2005 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 referred the dispute for adjudication to this tribunal on the terms of reference in the Schedule:

**SCHEDULE**

"Whether the action of the management of superintendent of post offices, Junagadh division in dismissing the services of Shri P.P. Aparnathi, EDA Kukasavada with effect from 05.07.1999 is legal and justified? If not, what relief the workman concerned is entitled to?"

2. Notice issued to the parties. The workman appeared and execute power (Vailpatra) in favour of Shri Hitesh D. Kathrotiya, Advocate on 22.1.2005 (Ext. 3) and the 1st party also appeared by executing Vakilpatra in favour of Shri P.M. Rami, Advocate (AGP) on 27.02.2007 (Ext.4). Thereafter workman (S.P.) did not file statement of claim in spite of number of adjournment whereas the 1st party filed its written statement Ext. 6 on 06.08.2008 and its copy furnished to the S.P.'s lawyer Shri H.D. Kharitia, Advocate. The 2nd party did not appear in the case. His lawyer Shri Kathrotia was informed on 01.03.2012 to file statement of claim when on that date the 1st party file pursis (Ext.9) to dismiss the reference.

3. The case of the 1st party is that the workman (S.P.) was appointed on 17.08.1990 as E.D.A on contractual basis terminated at any time. The workman received money of Rs. 400 each for payment to the right person of two money orders but instead of paying to both M.O. amount to the receiver, he himself signed on their behalf in token of receipt of M.O. by name as receiver and witness to Shri Chakubhai Mithabhai and Shri Jamalbhai Mithabhai and thus the workman by doing false signatures as per volume-6 of chapter-13 under the section disobeyed the Acts of the year Extra Departmental Agent of the post Department. He was given memo of commiting the offence and in written reply workman accepted all allegations. Then by order dated 05.07.1999 the workman was terminated from the services. On these ground prayed to dismiss the reference.

4. The workman (2nd party) failed to submit statement of claim and left doing pairvi in the case and also left to attend the court. His lawyer did not also attend the court and did not submit S/c in spite of direction. So, there is reason to believe that the 2nd party has lost interest in this case and did not want to make contest in this reference against his termination from the services as E.D.A.

5. So, in the circumstances, the term of reference as per Schedule is answered in favour of the 1st party (Employer) that the action in dismissing the services of the workman Shri Aparnath w.e.f. 05.07.1999 is justified. The S.P. is not entitled to any relief.

The reference is accordingly dismissed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 781.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, नेशनल ब्यूरो ऑफ़ सोइल सर्वे एण्ड लैंड यूज़ प्लानिंग (इंडियन कौंसिल ऑफ़ एग्रीकल्चरल रिसर्च), नागपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट संदर्भ संख्या सीजीआईटी/एनजीपी/02/2006 को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-42012/118/1995-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 781.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/NGP/02/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Director, National Bureau of Soil Survey & Land Use Planning (ICAR), Nagpur and their workman, which was received by the Central Government on 05/02/2014.

[No. L-42012/118/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/02/2006** Date: 08.04.2013.

**Party No. 1 :** The Director, National Bureau of Soil Survey and Land Use Planning (Indian Council of Agricultural Research), Shankar Nagar, Amravati Road, Nagpur.

**Versus**

**Party No. 2 :** Shri Madhukar Ramji Wahane R/o. Bajaj Nagar, ICAR Complex, Nagpur.

**AWARD**

(Dated: 08th April, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of National Bureau of Soal Survey and Land Use Planning (Indian Council of Agricultural Research) and their workman, Shri Madhukar Wahane, for adjudication, as per letter No. L-42012/118/95-IR(DU), dated 03.02.2006, with the following schedule:

> "Whether the action of the management of National Bureau of Soil Survey & Land Use Planning (Indian Council for Agriculture Research), Nagpur in terminating the services of Shri Madhukar S/o Shri Ramji Wahane w.e.f. 19.07.1988 is justified? If not, to what relief the workman is entited?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Madhukar Wahane, ("the workman" in short), filed the statement of claim and the management of National Bureau of Soil Survey and Land Use Planning (Indian Council of Agricultural Research), ("Party No. 1" in short) filed its written statement.

The case of the workman is that he is a workman and party no. 1 is an industry as per the definitions of the Act and he came to be appointed by party no. 1 as a driver as per order dated 28.01.1987 in the pay scale of Rs. 950-Rs. 1400 and he worked continuously without any break for about 18 months from the date of his initial appointment and completed more than 240 days of continuous service with clean and unblemished service record and his services were deemed to be regularized and he was deemed to be a permanent employee, but to his surprise, on 19.07.1988, he received a communication from party no. 1, whereby he was informed that his services were terminated with immediate effect, in accordance with the terms and conditions no. 6 of the Memorandum dated 29.01.1987 (wrongly mentioned as 19.01.1987 in the statement of claim) and as he had completed more than 240 days of continuous service, it was mandatory for party no. 1 to comply with the provisions of section 25-F of the Act, before termination of his services and as the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's pay in lieu of the notice nor retrenchment compensation was paid to him, his termination is invalid and he is entitled for reinstatement in service with continuity. It was further pleaded by the workman that no seniority list as required under section 81 was published before his termination and juniors were kept in service, so his termination from service is arbitrary and colorable exercise of employer's right and party no.1 violated the provisions of section 25-F, 25-G and 25-H of the Act and after termination of his services, he made several representations to party no. 1 and requested to take him back in service, since his termination was illegal and he was jobless, but no heed was paid to his representations, so he was constrained to raise the Industrial dispute. The workman has prayed for his reinstatement in service with contiunity and full back wages.

3. The party no. 1 in the written statement has pleaded *inter-alia* that it is not an "industry" as defined under section 2 (j) of the Act and as such, the reference is not maintainable and it is purely a research institute which comes on research on land and soil and the knowledge so acquired is used for the benefit of public and such knowledge is not sold in the market and there is no profit motive behind it and it serves as a regal function and as such, it is not an industry and the Tribunal has no jurisdiction to adjudicate the reference and as such preliminary objection goes to the very root of the jurisdiction of the Tribunal, it is necessary to decide the said objection at first, before deciding the reference on merits.

It is further pleaded by the party no.1 that Government of India had imposed ban on recruitment and there were no sanctioned post available to fulfill the requirement of the department and since there was dire need of driver, the said post had to be filled up by recruitment of casual workers and as such, the workman, who had a regular driving licence was offered the post of driver in a temporary capacity *vide* memorandum dated 29.01.1987 in the pay scale of Rs. 950-20-1150-EB-25-1400, on the terms and conditions stated there in and accordingly on compliance of the conditions, he was appointed *vide* letter dated 25.02.1987, *w.e.f.* 05.02.1987 and he was appointed on probation for 2 years in a temporary post and during the period of his probation, the workman got involved in a road accident on 02.04.1988, while driving office jeep No. MTE-3570 and dashed the vehicle against the State Road Transport Bus bearing no. MTE-6863 and due to the rash and negligent driving of the workman, the jeep of the Department got damaged and for the purpose of preliminary enquiry, a committee was constituted *vide* office order dated 23.05.1988 and the members of the committee met on 04.07.1988 for conducting the enquiry and the workman was present in the enquiry and the committee enquired into the details of the accident and recorded the statement of the workman and on the basis of the oral statement and admission of the workman about his negligence and rash driving, the competent authority decided not to continue the workman in service and terminated him with immediate effect vide office order dated 19.07.1988, in terms of the condition no. 6 of the memorandum of offer No. 771/4 dated 29.01.1987.

It is further pleaded by party no. 1 that the workman had not completed his probationary two years period of service satisfactorily and as such, there was no question of his regularisation and no order regularizing his services was issued to him and the workman had not completed 240 days of work as alleged and there was no need for it to follow the provisions of section 25-F of the Act and it has its own service conditions in its bye laws, which are applicable to its permanent and temporary employees and according to its bye laws, the Central Civil Services (Classification, Control and Appeal) Rules of the Government of India shall apply to its employees and as the workman was employed on temporary basis, the Central Government services (Temporary Service) Rules, 1965 were applicable to him and the services of the workman were terminated in terms of clause 6 of the memorandum of offer which stated that, "6-His/Her appointment may be terminated without assigning any reasons by one month's notice on either side under Rule-5 of the Central Government Services (Temporary Service) Rules, 1965. During the period of probation however the appointing authority may terminate service of appointee without the notice and without the payment of salary in lieu thereof" and in view of the said conditions, the termination of the services of the workman was legal and proper and the workman is not entitled to any relief.

4. In order to prove their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness in support of his case. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that initially, he was engaged as a casual labour in NBSS and as per the appointment letter, Ext. M-I, he was appointed as a temporary driver and on 02.04.1988, the jeep bearing registration number MTE-3579, which he was driving, met with an accident and there was a departmental enquiry against him for causing the accident and basing on the result of the enquiry, his services were terminated on 19.07.1988 and his services were terminated during the period of probation.

5. One Mr. Chandrakant K. Karche has been examined as a witness from the side of the party no. 1 and in his examination-in-chief, which is on affidavit, this witness has also reiterated the facts mentioned in the written statement. In his cross-examination, this witness has admitted that he was not involved in any way either in the appointment or in the termination of the workman and he was not a part of the enquiry held against the workman in any capacity and he has no personal knowledge about the dispute raised by the workman and his knowledge about the case is based on the documents relating to the same and the services of the workman were terminated due to the accident caused by him and no charge sheet was issued by the management against the workman.

6. Before delving into the merit of the matter, I think it necessary to mention the admitted facts in the case. The admitted facts are that the workman was appointed as a driver on probation of two years as per the memorandum dated 28/29.01.1987, Ext. M-I, issued by party no. 1 and the workman worked continuously till 19.07.1988 and his services were terminated *vide* order dated 19.07.1988, Ext. M-II. It is also not disputed that on 02.04.1988, the jeep bearing registration no. MTE-3579 met with an accident, while the workman was driving the same and that a committee was formed by the party no. 1 for conducting an enquiry into the accident of jeep MT-3579 driven by the workman and on 04.07.1988, the said committee conducted the enquiry and held that the accident took place only due to non-compliance of the prescribed speed limits by the workman, as per Ext. M-XIII. It is also not disputed that before termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with.

6. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from clause 5 of the memorandum, Ext. M-I that the workman was appointed as a driver against a permanent post, as he was directed to remain on probation for a period of two years and the workman worked continuously from 29.01.1987 as a driver with party no. 1 till 19.07.1988, when his services were terminated and even though, no charge sheet was submitted against the workman, there was a departmental enquiry in regard to the accident of the jeep MTE-3579 driven by the workman, on 02.04.1988 and it is clear from the proceedings of the said enquiry, Ext-M-XIII that there was no finding that the accident took place due to any rash and negligent driving of the workman and moreover there is nothing in the order of termination, Ext. M-II that the services of the workman were terminated on the basis of the report of the facts findings committee constituted to make the enquiry against the workman. It was further submitted by the learned advocate for the workman that the workman had completed more than 240 days of continuous service before termination of his services, but his services were terminated by party no.1 without giving one month's notice or on one month's pay in lieu of the notice or retrenchment compensation, which are mandatory as per the provisions of section 25-F of the Act and due to non-compliance of the mandatory provisions of the Act, the termination of the services of the workman is invalid and the same amounts to retrenchment and the workman is not gainfully employed, after termination of his services and therefore, he is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that the party no. 1 is not an industry as defined u/s. 2(j) of the Act and as such, the reference is not

maintainable and is therefore is liable to be answered in the negative. It was further submitted by the learned advocate for party no. 1 that the workman was appointed as a driver in a temporary capacity *vide* the memorandum, Ext. M-I, on the terms and conditions stated therein and during the period of probation, the workman got involved in a road accident on 02.04.1988, while driving the office jeep No. MTE-3579 and for the purpose of making a preliminary enquiry, a committee was constituted and the said committee found that the accident took place due to the rash and negligent driving of the workman, so the competent authority decided not to continue the workman in service and terminated his services with immediate effect and *vide* order dated 19.07.1988, Ext. M-II, the services of the workman were terminated in terms of clause-6 of the memorandum dated 29.01.1987, Ext. M-I and as the termination of the services of the workman was according to the Statutory Rules, the same is legal and proper and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the party No. 1 placed reliance on the decisions reported in AIR 1997 SC-1855 (Physical Research Laboratory Vs K.G. Sharma) and (1997) 4 SSC-391 (Himanshu Kumar Vidyarthi Vs. State of Bihar and orders).

8. In view of the stands taken by the parties, the first question requires to be considered is as to whether, the party No. 1 is an industry as defined under section 2 (j) of the Act.

In this regard, I think it apropos to mention about the judgement of the Hon'ble Apex Court reported in AIR 1978 SC 548 (Bangalore Water Supply Vs. Sewerage Board). In the above judgment, the Hon'ble Apex Court have held that:—

"S.2 (j)— "Industry—Meaning and scope of what the term includes and excludes Tests and guidelines for such inclusion and exclusion indicated- Charitable Institutions, Clubs, Educational Institutions, Municipalities, Research Institutes, Co-operative Societies, Establishment of Liberal Profession, if industry- Agencies and departments of Government engaged in any non-sovereign functions when deemed to be industry indicated—Complex of services—Some qualifying for exemptions and some not—Tests.

"Industry" as defined in the sub-section has wide import.

Where there is (i) Systematic activity (ii) Organised by cooperation betwwen employer and employee (the direct and substantial element is chimerical) and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wished (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prime facie, there is an industry in the enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations."

Taking into consideration the pleadings of the parties regarding the activities and functions performed by party No. 1 and applying the principles enunciated by the Hon'ble Apex Court in the judgement as mentioned above, it is found that part No. 1 is an "industry" as definded under section 20(j) of the Act.

9. Admittedly, the workman worked continuously for more than 240 days prior to the termination of his services. It is also found that the punishment of termination from services was not imposed as a punishment against the workman and there was never any charge sheet against the workman and there was also never any enqiry against him, basing on any charge sheet. There is also no material on record to show that basing on the result of the preliminary enquiry, any order was passed by the competent authority to terminate the services of the workman. The order, Ext. M-II, under which the services of the workman were terminated also does not show that the services of the workman were terminated as it was found by the committee that the accident of the office jeep was caused due to he rash and negligent driving of the workman. Ext. M-II shows that the termination of the services of the workman was as per clause-6 of the memorandum, Ext. M-I. Clause-6 of Ext. M-I shows that services of the workman could be terminated without the notice and without the payment of salary in lieu thereof. But as the said clause is against the mandatory provisions of the Act, the same is not tenable, As the termination of the services of the workman was without compliance of the mandatory provisions of section 25-F of the Act, the same amounts to retrenchment and is held to be illegal.

10. Now, the question remains for considerations as to what relief or reliefs the workman is entitled. Though it was submitted by the learned advocate for the workman that the appointment of the workman was against a permanent vacancy in view of clause-5 of Ext. M-I, it is found from Ext. M-I itself that the appointment of the workman was against a temporary post of driver and not against a permanent post. The termination of the workman from services took place on 19.07.1988, about 25 years back. Keeping in view the principles settled by the Hon'ble Apex Court in number of decisions including in the decision reported in 2010(8) SCALE (Incharge officer and another Vs Shankar Shetty) and taking into consideration the facts the circumstances of the case in hand, in my considered view, instead of reinstatement in service,

monetary compensation of Rs. 50,000/- would meet the ends of justice. Hence, it is ordered:—

**ORDER**

The action of the management of National Bureau of Soil Survey & Land Use Planning (Indian Council for Agriculture Research), Nagpur in terminating the services of Sri Madhukar S/o Shri Ramji Wahane w.e.f. 19.07.1988 is unjustified. The workman is entitled to monetary compensation of Rs. 50,000 (Rupees fifty thousand only). The workman is not entitled to any other relief. The party No. 1 is directed to pay the monetary compensation of Rs. 50,000/- (Rupees fifty thousand only) to the workman within 30 days of the publication of the award in the Official Gazette.

J.P. CHAND, Presiding Officer,

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 782.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, टेलिकॉम, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या (सीजीआईटी/एनजीपी/81/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/30/2006-आईआर (डीयू)]

पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 782.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/NGP/81/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Telecom, Nagpur and their workman, which was received by the Central Government on 05/02/2014.

[No. L-40012/30/2006-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/81/2006** Dated: 15.05.2013

**Party No. 1 (a)** : The General Manager (Telecom), Telecom Bhavan, Zero Miles, Civil lines, Nagpur-440001.

(b) : The General Manager, Telecom Project (R.E.), Telephone Exchange Building, R.T.T.C. Campus, Seminary Hills, Nagpur-6

**Versus**

**Party No. 2** : Shri Ramdatta, S/o Shri Rajdeo Yadav, R/o C/o Rashmi Kirana Stores, Azad Chowk, Rajiv Nagar, Hingna Road, Nagpur

**AWARD**

(Dated: 15th May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act"in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom and their workman, Shri Ramdatta R. Yadav, for adjudication, as per letter No. L-40012/30/2006-IR(DU) dated 16.10.2006, with the following schedule:

> "Whether the action of the management of General Manager, Telecom Project (R.E.) Nagpur in terminating the services of their workman, Shri Ramdatta Yadav w.e.f. 7.12.1988 is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, parties were notices to file their respective statement of claim and written statement in response to which, the workman, Shri Ramdatta Yadav ("the workman" in short) filed the statement of claim and the management of Telecom ("Party No. 1" in short) filed their written statement.

The case of the workman is that he was employed as a casual labourer by the part No. 1 for construction of the workshop laying down of pipes, for maintenance of cables and for doing other jobs on 01.07.1987 and his appointment was against a clear and vacant post and he worked from 01.07.1987 to 07.12.1988 and from the date of his appointment, he worked continuously with party No. 1 and completed more than 240 days of work in a calender year, but he came to be laid off, by the party no. 1 by notice dated 07.12.1988, without payment of lay off compensation. It is further pleaded by the workman that party No. 1 with mala fide intention prepared a seniority list on 18.11.1991 in order to defeat his claim and falsely remarked in the said seniority list against his name as, "left the job on his own accord"and he had never left the job on his own accord and as such, he along with some others preferred Original Application No. 163/1993 through the union, 'The Nagpur Casual Labourers' Union", before the Central Administrative Tribunal, Bombay Bench at Nagpur ("the CAT" in short)

assailing the said list and claiming certain directions including of providing work as per seniority list and the said petition was disposed of on 02.11.1999 by the CAT with a direction to the party No. 1 to consider and decide the representations to himself and the union and the union, "Nagpur Telecom Casual and Permanent Labour Union" had filed Original Application No. 609/1994 before the CAT and the said application was disposed of on 17.09.1998 by the CAT with the direction to the party No. 1 to pass a speaking and reasoned order in respect of the representations submitted by himself and the other applicants and in the said original application, by order dated 10.02.2000, direction was given by the CAT to himself and the other applicants to give individual representtion to party No. 1 and to consider such applications by party No. 1 within three months. It is further pleaded by the workman that after his oral termination, he did not receive any communication from party No. 1 and his representations were never decided by the party No. 1 and he was under the impression that his illegal termination was challenged in the original application filed in the CAT and it was only in May, 2005, he came to know that his illegal termination was not challenged and under such circumstances there was delay in raising the dispute.

The further case of the workman is that he had rendered continuous and uninterrupted service with the party No. 1 in a calender year and though he presented himself for work practically every day after 07.12.1998, he was not provided with any work and party No. 1 orally terminated his services .w.e.f. 01.01.1989 and termination of his services is illegal, arbitrary and malafide amounting to unfair labour practice and party No. 1 neither gave the notice of retrenchment nor paid any wages in lieu of the notice or the retrenchment compensation and the party no. 1 did not display the seniority list prior to his retrenchment and his termination is in violation of the provisions of sections 25-F, 25-G, 25-H and 25-N of the Act. Prayer has been made by the workman to declare the action of the party No. 1 to be illegal and unjustified and to reinstate him in service with full back wages and consequential benefits.

3. The party No. 1 in their written statement have pleaded *inter-alia* that the workman was engaged on 01.07.1987 as a casual labourer for a specific work and for specific period with a condition that his services would be depended upon the completion of the project and he was never appointed against any vacant or permanent post and the workman did not work continuously from 01.07.1987 to 07.12.1988 and he did not complete 240 days of work in one calendar year and by letter dated 07.12.1988, the workman was intimated about the status of the works available in R.E. Division and the project work of R.E. Division was completed on 30.06.1990 and the workman was never laid off and he left the job on his own accord, before completion of the project work and therefore question of paying lay off compensation does not arise at all and the directions given by the CAT were duly observed by them and the union representing the workman filed cases before the CAT bearing Original Application No. 163/1993, 609/1994 and C.P. No. 25/1999 and the said cases were disposed of by the CAT with directions that individual representation should be filed by every applicant pointing out the anomalies in the seniority list of casual labourers and the department should pass a speaking and reasoned order in respect of the representations within three months and accordingly, the workman submitted his representation and on 19.05.2000, the said representation was rejected by speaking order by them and the reasons stated by the workman regarding the delay are not bona fide and it is not true to say that the workman presented himself practically every day after 07.12.1998 and he was not provided with work and he left the work without any prior permission and intimation and the engagement of the workman as a casual labourer for a specific project work and for a specific period and as he was never appointed as per Recruitment Rules or against any sanctioned post and such facts were duly intimated to the workman and he was every well aware about the actual status of the work and as such, he has no right, much less legal right to claim any appointment or reinstatement to the post and as the engagement was temporary on daily wages, no right was bestowed on him and his services were liable to be discontinued at any point to time and the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness in support of his case. One Shri Gopal Badole, has been examined as a witness by the party No. 1.

5. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has stated that he was engaged by BSNL as a casual labourer and his engagement was for laying of underground cable and no appointment order was issued by the BSNL and by notice dated 07.12.1988, Ext. W-II, he was intimated that he would be laid off, after the completion of the on-going construction and the project in which he was working was to be completed by 30.06.1990 and he himself and some other casual workers had approached the CAT through the union in O.A. No. 599/1990 and in that O.A., BSNL was directed to prepare a combined seniority list of casual labourers and to provide work to the casual labourers according to the seniority list and as per the direction of the CAST, BSNL prepared the combined seniority list, Ext. W-III of the casual labourers and his name was at serial No. 804 in the said seniority list and as per the direction of the CAT, he filed his representation on 25.02.2000 and his representation was rejected by BSNL as per order dated 19.05.2000. The workman has further admitted that he worked with BSNL till 31.12.1988.

6. The witness for the party No. 1 in his evidence on affidavit has also reiterated the facts mentioned by the party No. 1 in the written statement. In his cross-examination, the witness has stated that the workman was engaged under Railway Electrification Project and the said project was to continue till 1990 and as per the order of the CAT in O.A. No. 599/1990, the Telecom department prepared a seniority list of the casual workers, Exhibit W-III and the name of the workman was at serial No. 804 of the said list and in the remarks column against the name of the workman "left job on his own accord" has been mentioned.

7. During the course of argument, it was submitted by the learned advocate for the workman that the workman worked from 01.07.1987 to 07.12.1988 continuously and completed more than 240 days of continuous service, but in violation of the mandatory provisions of Law, the workman was laid off by an order passed on 07.12.1988 and the management had wrongly marked the workman as "left job on his own accord" in the seniority list and therefore, the workman is entitled for reinstatement in service with full back wages and consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2005 III CLR 250 (Lalchand Vs Industrial Court), 2008 I CLR 429 (Neeranjan Cinema Vs Prakash Chandra Dubey) and 2002 I CLR 132 (Pancham Singh Vs State of Haryana & another).

8. Per contra, it was submitted by the learned advocate for the party No. 1 that the workman was engaged as a casual labourer for a psecific project and for a specific period and the workman has admitted such facts in his cross-examination and the workman was not appointed as per Recruitment Rules or against any sactioned post and there was a settlement between the workman and the management before the ALC and as per the said settlement, the workman attended duty for one day and as the workman left the job on his own accord, before completion of project work, the question of paying lay of compensation does not arrive and the workman was not terminated form the serivces w.e.f. 01.01.1989 and no legal right was vested upon the workman to claim appointment or reinstatement in service as he was never appointed as per recruitment rules or against any sanctioned post and the reference is belated reference and no explanation has been given by the workman for the delay and on this said count the reference is liable to be answered in negative and the workman has not produced to show that he had worked for 240 days in one calendar year and as such, there is no question of violation of Section 25 F of of the Act and for that the workman is not entitled for any relief.

9. On perusal of the statement of claim, written statement and evidence, both oral and documentary adduced by the parties, it is found that the workman worked 240 days in the preceding 12 months from the alleged date of termination of service. Hence, I do not find any force in the contention raised by the learned advocate for the Party No. 1 that the workman did not complete 240 days of service in one calendar year.

10. According to the claim of the workman and so also as per that schedule of the reference, the services of the workman were terminated by order dated 07.12.1988. The so called termination order dated 07.12.1988 has been marked as Exhibit W-II. On perusal of Exhibit W-II, it was found that the same is actually not a layoff notice, but the same was a notice by the Party No. 1 of a possible layoff due to completion of the on going project. In the said notice, it was intimated to the workman that the construction work in which the workman was working was going to be completed and there was no likelihood of additional work and the workman would be laid off after the completion of ongoing construction work under A.E.T. (R.E.), Nagpur. The workman was further intimated by the said notice that his services might again be required at the time of dismantlement work in Nagpur-Pandhurna Section and as such to keep in touch with the office for future development.

In the statement of claim in paragraph 3, the workman has mentioned that on 07.12.1998, he was served with a notice of lay off by the management. The said statement apparently appears to be not correct, as because, the layoff notice was dated 07.12.1988 and was not of 07.12.1998 as mentioned by the workman. In paragraph 1 of the statement of claim, the workman has mentioned that he worked continuously from 01.07.1987 till 07.12.1988. However, in paragraph 10 of the statement of claim, the workman has mentioned that the management orally terminated his services w.e.f. 01.01.1989. In his corss-examination, the workman has admitted that that he worked with BSNL till 31.12.1988. On perusal Exhibit W-I, the personal record of employment-cum-muster roll, which has been produced by the wrokman, it is found that the workman worked with the Party No. 1 from 01.07.1987 till 31.012.1988 and not from 01.07.1987 to 07.12.1988 as claimed by the workman. So, it is clear from the materials on record that the workman was not terminated from the services on 07.12.1988 or 01.01.1989 as claimed by him. From the materials on recrord and the discussions made above, it is clear that the services of the workman were not terminated *vide* notice dated 07.12.1988 as mentioned in the schedule of reference. It is also clear from the materials on record that the workman did not come to work in view of the notice dated 07.12.1988. It is found from the materials on the record that the engagement of the workman was on casual basis as a daily wager and his appointment was not made according to the recruitment rules of Party No. 1 and his engagement was for a specific project till completion of the said project. It is also clear that the workman in view of the notice dated 07.12.1988 left the work on his own accord before completion of the project. Hence, there was no question of compliance of

the provisions of Section 25-F of the Act. The schedule of reference as made by the Govt. seems not to be correct.

As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have not direct application to this case.

Hence it is ordered:

**ORDER**

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 783.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, टेलिकॉम, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/82/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं. एल-40012/28/2006-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 783.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/NGP/82/2006) of the Cent. Govt. Indus. Tribunal Labour Court, Nagpur now as shown in Annexure, in the Industiral Dispute between the employers in relation to management of The General Manager, Telecom, Nagpur and their workman, which was received by the Central Government on 05/02/2014.

[No. L-40012/28/2006-IR(DU)].

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/82/2006** Date: 15.05.2013

Party No. 1 (a) : The General Manager (Telecom), Telcom Bhavan, Zero Miles, Civil Lines, Nagpur-440001.

(b) : The General Manager, Telecom Project (R.E.) Telephone Exchange Building, R.T.T.C. Campus, Seminary Hills Nagpur-6.

**Versus**

Party No. 2 : Shri Brajesh Kumar Tripathi, S/o shri Rajaram Tripathi, R/o, Plot No. 73, Radhanand Nagar, Besa Road, Nagpur.

**AWARD**

(Dated: 15th May, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom and their workman, Shri Brajesh Kumar, for adjudication, as per letter No. L-40012/28/2006-IR(DU) dated 20.10.2006, with the following scheduled:—

> "Whether the action of the management of General Manager, Telecom Project (R.E.) Nagpur in terminating the services of their workman, Shri Brajesh Kumar w.e.f. 7.12.1988 is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Brajesh Kumar ("the workman" in short) filed the statement of claim and the management of Telecom (Party No. 1" in short) filed their written statement.

The case of the workman is that he was employed as a casual labourer by the Party No. 1 for construction of the workshop. Laying down of pipes, for maintenance of cables and for doing other jobs on 01.07.1987 and his appointment was against a clear and vacant post and he worked from 01.07.1987 to 07.12.1988 and from the date of his appointment, he worked continuously with party No. 1 and completed more than 240 days of work in a calendar year, but he came to be laid off, by the party No. 1 by notice dated 07.12.1988, without payment of lay off compensation. It is further pleaded by the workman that party No. 1 with malafide intention prepared a seniority list on 18.11.1991 in order to defeat his claim and falsely remarked in the said seniority list against his name as, "left the job on his own accord" and he had never left the job on his own accord and as such, he along with some others preferred Original Application No. 163/1993 through the union, 'the Nagpur Casual Labourers' Union", before the Central Administrative Tribunal, Bombay Bench at Nagpur ("the CAT" in short) assailing the said list and claiming certain directions including of providing work as per seniority list and the said petition was disposed of on 02.11.1999 by the CAT with a direction to the party No.1 to consider and decide the representations of himself and the union and the union, "Nagpur Telecom Casual and Permanent Labour Union" had filed Original Application No. 609/1994 before the CAT

and the said application was disposed of on 17.09.1998 by the CAT with the direction to the party No. 1 to pass a speaking and reasoned order in respect of the representations submitted by himself and the other applicants and in the said original application, by order dated 10.02.2000, direction was given by the CAT to himself and the other applicants to give individual representation to party No. 1 and to consider such applications by party no. 1, within three months. It is further pleaded by the workman that after his oral termination, he did not receive any communication form party No. 1 and his representations were never decided by the party No. 1 and he was under the impression that his illegal termination was callanged in the original application filed in the CAT and it was only in May, 2005, he came to know that his illegal termination was not challenged and under such circumstances there was delay in raising the dispute.

The further case of the workman is that he had rendered continuous and uninterrupted service with the party No. 1 in a calendar year and though he presented himself for work practically every day after 07.12.1988, he was not provided with any work and party No. 1 orally terminated his services w.e.f. 01.01.1989 and termination of his services is illegal, arbitrary and mala fide amounting to unfair labour practice and party No. 1 neither gave the notice of retrenchment nor paid any wages in lieu of the notice or the retrenchment compensation and the party No. 1 did not display the seniority list prior to his retrenchment and his termination is in violation of the provisions of sections 25-F, 25-G, 25-H and 25-N of the Act. Prayer has been made by the workman to declare the action of the party No. 1 to be illegal and unjustified and to reinstate him in service with full back wages and consequential benefits.

3. The party no. 1 in their written statement have pleaded *inter-alia* that the workman was engaged on 01.08-1987 as a casual labourer for a specific work and for a specific period with a condition that his services would be depended upon the completion of the project and he was never appointed against any vacant or permanent post and the workman did not work continuously from 01.8.1987 to 07.12.1998 and he did not complete 240 days of work in one calendar year and by letter dated 07.12.1988, the workman was intimated about the status of the works available in R.E. Division and the project work of R.E. Division was completed on 30.06.1990 and the workman was never laid off and he left the job on his own accord, before completion of the project work and therefore question of paying lay off compensation does not arise at all and the directions given by the CAT were duly observed by them and the union representing the workman filed cases before the CAT bearing Original Application No. 163/1993, 609/1994 and C.P. No. 25/1999 and the said cases were disposed of by the CAT with directions that individual representation should be filed by every applicant pointing out the anomalies in the seniority list of casual labourers and the department should pass a speaking and reasoned order in respect of the representations within three months and accordingly, the workman submitted his representation and on 19.05.2000, the said representation was rejected by speaking order by them and the reasons stated by the workman regarding the delay are not bona fide and it is not true to say that the workman presented himself practically everyday after 07.12.1988 and he was not provided with work and he left the work without any prior permission and intimation and his case was reconciled in the office of ALC, Nagpur and as a result of the reconciliation and settlement dated 06.03.1990, the workman was taken back on duty and he was sent to the working party *vide* letter dated 12.03.1990 and he worked for only one day and remained absent thereafter without prior permission and intimation and the engagement of the workman as a casual labourer for a specific project work and for a specific period and as he was never appointed as per Recruitment Rules or against any sanctioned post and such facts were duly intimated to the workman and he was very well aware about the actual status of the work and as such, he has no right, much less legal right to claim any appointment or reinstatement to the post and as the engagement was temporary on daily wages, no right was bestowed on him and his services were liable to be discontinued at any point of time and the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness in support of his case. One Shri Gopal Badole, has been examined as a witness by the party No. 1.

5. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has stated that he was engaged by BSNL as a casual labourer and his engagement was for laying of underground cable and no appointment order was issued by the BSNL and by notice dated 07.12.1988, Ex. W-II, he was intimated that he would be laid off, after the completion of the on-going construction and the project in which he was working was to be completed by 30.06.1990 and he himself and some other casual workers had approached the CAT through the union in O.A. No. 599/1990 and in that O.A., BSNL was directed to prepare a combined secniority list of casual labourers and to provide work to the casual labourers according to the seniority list and as per the direction of the CAT, BSNL prepared the combined seniority list, Ext. W-III of the casual labourers and his name was at serial No.816 in the said seniority list and as per the direction of the CAT, he filed his representation on 25.02.2000 and his representation was rejected by BSNL as per order dated 19.05.2000 and after rejection of his representation, he approached the ALC and there was a

settlement and the management of BSNL agreed to take him back in service and as per the said settlement, he attended duty for one day and he has not mentioned either in his statement of claim nor in his affidavit that he was not allowed to work by the management. The workman has further admitted that he worked with BSNL till 06.03.1990.

6. The witness for the party no. 1 in his evidence on affidavit has also reiterated the facts mentioned by the party no. 1 in the written statement. In his cross-examination, the witness has stated that the workman was engaged under Railway Electrification Project and the said project was to continue till 1990 and as per the order of the CAT in O.A. No. 599/1990, the Telecom department prepared a seniority list of the casual workers, Exhibit W-III and the name of workman was at serial No. 816 of the said list and in the remarks column against the name of the workman "left job on his own accord" has been mentioned.

7. During the course of argument, it was submitted by the learned advocate for the workman that the workman worked from 01.07.1987 to 07.12.1988 continuously and completed more than 240 days of continuous service, but in violation of the mandatory provisions of Law, the workman was laid off by an order passed on 07.12.1988 and the management had wrongly marked the workman as "left job on his own accord" in the seniority list and therefore, the workman is entitled for reinstatement in service with full back wages and consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2005 III CLR 250 (Lalchand *Vs* Industrial Court), 2008 I CLR 429 (Neeranjan Cinema *Vs* Prakash Chandra Dubey) and 2002 I CLR 132 (Pancham Singh *Vs* State of Haryana & another).

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman was engaged as a casual labourer for a specific project and for a specific period and the workman has admitted such facts in his cross-examination and the workman was not appointed as per recruitment Rules or against any sanctioned post and there was a settlement between the workman and the management before the ALC and as per the said settlement, the workman attended duty for one day as the workman left the job on his own accord, before completion of project work, the question of paying lay of compensation does not arrive and the workman was not terminated from the services w.e.f. 01.01.1989 and no legal right was vested upon the workman to claim appointment or reinstatement in service as he was never appointed as per recruitment rules or against any sanctioned post and the reference is belated reference and no explanation has been given by the workman for the delay and on this said count the reference is liable to be answered in negative and the workman has not produced to show that he had worked for 240 days in one calender year and as such, there is no question of violation of Section 25-F of the Act and for that the workman is not entitled for any relief.

9. On perusal of the statement of claim, written statement and evidence, both oral and documentary adduced by the parties, it is found that the workman worked 240 days in the preceding 12 months from the alleged date of termination of service. Hence, I do not find any force in the contention raised by the learned advocate for the Part No.1 that the workman did not complete 240 days of service in one calendar year.

10. According to the claim of the workman and so also as per the schedule of the reference, the services of the workman were terminated by order dated 07.12.1988. The so called termination order dated 07.12.1988 has been marked as Exhibit W-II. On perusal of Exhibit W-II, it was found that the same is actually not a layoff notice, but the same was a notice by the Party No. 1 of a possible layoff due to completion of the ongoing project. In the said notice, it was intimated to the workman that the construction work in which the workman was working was going to be completed and there was no likelihood of additional work and the workman would be laid off after the completion of ongoing construction work under A.E.T. (R.E.), Nagpur. The workman was further intimated by the said notice that his services might again be required at the time of dismantlement work in Nagpur-Pandhurna Section and as such to keep in touch with the office for future development.

In the statement of claim in paragraph 3, the workman has mentioned that on 07.12.1998, he was served with a notice of lay off by the management. The said statement apparently appears to be not correct, as because, the layoff notice was dated 07.12.1988 and was not of 07.12.1998 as mentioned by the workman. In paragraph 1 of the statement of claim, the workman has mentioned that he worked continuously from 01.07.1987 till 07.12.1988. However, in paragraph 10 of the statement of claim, the workman has mentioned that the management orally terminated his services w.e.f. 01.01.1989. In his cross-examination, the workman has admitted that he worked with BSNL till 06.03.1990. On perusal Exhibit W-I, the personal record of employment-cum-muster roll, which has been produced by the workman, it is found that the workman worked with the Party No. 1 from 01.08.1987 till 31.05.1990 and not from 01.07.1987 to 07.12.1988 as claimed by the workman. So, it clear from the materials on record that the workman was not terminated from the services on 07.12.1988 or 01.01.1989 as claimed by him. From the materials on record and the discussions made above, it is clear that the services of the workman were not terminated *vide* notice dated 07.12.1988 as mentioned in the schedule of reference. It is also clear from the materials on record that the workman did not come to work in view of the notice dated 07.12.1988. It is also clear from the materials on record that in view of the

settlement between the workman and the Party No. 1 before the ALC, the workman was taken back in service and he worked for only one day and thereafter he remained absent. From the materials on record and the discussions made above, it is clear that the services of the workman were not terminated *vide* notice dated 07.12.1988 as mentioned in the schedule of reference. It is also clear from the materials on record that the workman did not come to work in view of the notice dated 07.12.1988. It is found erom the materials on the record that the engagement of the workman was on casual basis as a daily wager and his appointment was not made according to the recruitment rules of Party No. 1 and his engagement was for a specific project till completion of the said project. It is also clear that the workman in view of the notice dated 07.12.1988 left the work on his own accord before completion of the project. Hence, there was no question of compliance of the provisions of Section 25-F of the Act. The schedule of reference as made by the Govt. seems not to be correct.

As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no direct application to this case.

Hence it is ordered:

**ORDER**

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 784.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट आफिॅस, डिपार्टमेंट ऑफ पोस्ट, अमरावती के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/62/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/105/96-आई आर (डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 784.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT/NGP/62/2002) of the Central Government Industrial tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Sr. Supdtt. of Post Offices, Department of Post, Amravati and their workman, which was received by the Central Government on 05/02/2014.

[No. L-40012/105/96-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/62/2002** Date: 14.08.2013.

**Party No. 1** : The Sr. Suptd. of Post Offices, Amravati Division, Amravati (M.S.)

**Versus**

**Party No. 2** : Shri K.S. Jadhav, C/o. Shri Laxman Mankar, Juna Diara, Ward No. 27, Shanivar Peth, Warud, Tah. Warud, District: Amravati (M.S.)

**AWARD**

(Dated: 14th August, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Post Office and their workman, Shri K.S. Jadhav, for adjudication, to CGIT-Cum-Labour Court, Jabalpur as per letter No. L-10012/105/96-IR (DU) dated 16.01.1998, with the following schedule:—

> "Whether the action of the management of Sr. Suptd. of Post Offices, Amravati in terminating the services of Shri K.S. Jadhav is legal and justified? If not, to what relief the workman is entitled and from what date?"

The case was subsequently transferred to this Tribunal for adjudicatio in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri K.S. Jadhav, ("the workman" in short), filed the statement of claim and the management of Post Office, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed as an Extra departmental delivery Agent *w.e.f.* 12.07.1979 with party no. 1 and subsequently, he was appointed as the Branch Post Master *w.e.f.* 30.06.1981 at Tembhurkheda Branch Post Office in the District of Amravati and his salary was Rs. 1050/- per month and after serving for about 14 to 15 years, he had to proceed on leave for his ill health and he had been advised by the doctors to take long treatment for

diseases of Hernia and Psychiatric complaints and as the said ailments were very expensive, the same put him under mental pressure and financial difficulties and his superior officer, the SD1, Morshi, Shri Dekate advised him not to take leave on medical ground, but to resign from the job temporarily for some days and that he would be again taken back in service and he being an illiterate and innocent servant, relied upon the said advice and tendered his resignation on 09.03.1994 and to his great surprise, he received two communications from party no. 1 as per letter dated 27.01.1995 and letter dated 30.01.1995 and in the first letter, it was intimated that his put-off case was revoked by the administration and in the second letter, he was informed about the acceptance of his resignation and he was at a loss to understand as to why and how, those two letters being of quite different in nature and bearing two different dates were sent to him in one envelope and the said facts showed the intentional ill motive of party no. 1 and the action of party no. 1 was a patent predetermined malafide act and was done with ulterior motive by flagrant contravention of the office procedure and Rules and Shri Dekate was instrumental to drive him out from office, by giving wrong advice and the per-forced resignation is not legal and the same was taken from him by fraud and can be treated as a forged document in the eye of law and as he was in service for nearly 15 years, he had acquired the status of a permanent employee and the conferment of permanent status on him guaranteed security of service and his removal from services abruptly and arbitrarily and in violation of the principles of natural justice, without giving any notice, show cause or pay in lieu of notice is unjustified and therefore, he is entitled for reinstatement in service.

3. The party no. 1 in the written statement has pleaded *inter-alia* that the reference is outside the jurisdiction of the Tribunal as the Hon'ble Apex Court in their judgment dated 02.02.1996 in Civil Appeal No. 3385/86, arising out of SLP(C) No. 587-588 of 1992 have held that the department of post is not an "industry" and its employees are not "workman" under the provision of the Act.

The party no. 1 after denying the allegations that, "The workman had to proceed on leave for his ill health and doctors had advised him to take long treatment for decease of Hernia and psychiatric complaints" has pleaded that the certificates dated 17.02.1994 and 27.02.1994 did not specify as to how long the workman was required to take rest and the certificates issued by two different doctors do not bear the date on which they were issued. It is further pleaded by party no.1 that the workman was working in the capacity of Extra-departmental Branch Post Master, Tembhurkheda Branch office and was governed by Extra Departmental Conduct and Service Rules and the workman did not obtain any sanction for leave or approval for arranging any substitute from any authority as per the DG's instructions and he handed over the charge of the branch post master to some unauthorized person and remained unauthorized absent for the period from 05.02.1994 to 08.03.1994 and the said period of absence was treated as unauthorized absence and no pay and allowance were paid to him and the workman is SSC passed and he cannot be said to be an illiterate person and he had already rendered 14 years of service and was well aware with the service Rule and it is absolutely absurd and unbelievable that the workman tendered his resignation on the advice of his superior officer and on the contrary, the workman embezzled the money received by him from the depositors and on the complaint of the depositors, an enquiry was initiated against him and pending enquiry, he was put off duty on 10.03.1994 and the same was further confirmed by the appointing authority on 18/21.03.1994 and when the enquiry was in progress, fearing the consequences including putting off duty, the workman sent his unconditional resignation dated 09.03.1994 by post to the SDI, Morshi, who forwarded the same to the Appointing Authority *i.e.* Senior Suptd. of Post Offices, Amravati Division, Amravati and the resignation tendered by the workman was not accepted immediately, as the enquiry was in progress and the workman brought to its knowledge about the settlement of the claim of the depositors by paying them the money and after completion of the enquiry, the put off duty order was revoked, *vide* memo dated 27.01.1995 and the resignation of the workman dated 09.03.1994 was accepted *vide* memo dated 30.01.1995 and the workman handed over the charge of the Extra departmental Branch Post Master on 02.02.1995 and he stood relieved from services on 02.02.1995 and there was no ill motive on its part and the resignation was never obtained by fraud and the same was never per forced and the workman had enough time to withdraw his resignation and it cannot be said that no opportunity was given to him in terms of principles of natural justice and the workman after four years has come with the case, which is nothing but only to harass it and there being no merit in the statement of claim, the same is liable to be dismissed and the workman is not entitled to any relief.

4. In order to prove their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has examined himself as a witness in support of his case, whereas, one Shri Abarao Kashiram Ingle, an Asstt. Suptd. Post Offices has been examined as a witness on behalf of the party no. 1.

5. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. He has further stated that realizing that party no. 1 may victimize him by way of accepting his resignation letter dated 09.03.1994, he gave an application dated 21.05.1994 and requested to cancel his resignation and to treat the same to be withdrawn and therefore, the acceptance of his resignation *vide* order dated 30.01.1995 is illegal.

In his cross-examination, the workman has admitted that the post master is expected to get the leave sanctioned, before proceeding on leave and he proceeded on leave from 05.02.1994 to 07.02.1994 and then from 17.02.1994 to 01.03.1994 and his leave was not sanctioned on both the occasions, before his proceeding on leave. The workman has further admitted that an enquiry was pending against him for misappropriation of Government Fund and he was placed on put off duty *i.e.* he was suspended during the enquiry. The workman in his cross-examination has further admitted that on 09.03.1994, he gave resignation letter in his own handwriting and the same was sent directly to the sub-division office, Morshi and Ext.-M3 is his resignation letter dated 09.03.1994, which was written and signed by him and his suspension was revoked by the order dated 27.01.1995 as per Ext. M4 and his resignation was accepted by the management as per Ext.-M5 and he handed over charge on 02.02.1995 as per in report, Ext.-M6. It is also admitted by the workman that he cannot assign any reason for not mentioning about the withdrawal of his resignation by letter dated 21.05.1994 and Ext.-M7 is his representation by registered post to the Department requesting to take him back in service.

6. The witness for the party no. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. Though this witness has been cross-examined at length, nothing of substance has been brought out to disbelieve his evidence. Rather, in the cross-examination, suggestions were given to the witness that the workman submitted his unconditional resignation and the resignation of the workman was accepted by the authorities by memo dated 30.01.1995 and such suggestions were admitted to be true by the witness. This witness has also further stated that the delay in accepting the resignation was due to pendency of investigation against the workman for embezzlement of government money.

7. At the time of argument, it was submitted by the learned advocate for the workman that during the whole period of service of about 16 years of the workman, no charge sheet or show cause notice was issued against him and there was also never any departmental enquiry against him and his entire service record was clean and unblemished and as he was ill, on 05.02.1994, he handed over the charge of the post office to an authorized substitute and submitted sick leave application with medical certificate first from 05.02.1994 and 07.02.1994 and then from 17.02.1994 to 08.03.1994, but he was not granted sick leave and was treated as unauthorized absent and the Suptd. of Post Offices, Morshi, Shri Dhakate by taking advantage of his mental as well as physical illness, forced him to submit his resignation on 09.03.1994, with the assurance that his resignation would not be accepted and he would be allowed on duty after some time and the workman was on put off duty w.e.f. 10.03.1994 for enquiry regarding alleged misappropriation of government money and when the workman became fit for duty, he submitted letter dated 21.05.1994 for withdrawal of his resignation and though management received the letter of withdrawal, refused to give any acknowledgment and the service of the workman was terminated on the basis of false and fabricated charge of misappropriation of government money under the cover of accepting his forced resignation by the management and no charge sheet was issued against the workman and no enquiry was conducted against him and the workman was not given any notice or notice pay in lieu of the notice and retrenchment compensation in violation of the provisions of Sections 25-F and 25-G of the Act and the termination of the services of the workman is against the principles of natural justice and the case of the workman is an illegal victimization and in view of the submission of the withdrawal letter dated 21.05.1994, it can be held that the resignation dated 09.03.1994 was not in operation and was treated as withdrawn and cancelled and the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the statement of claim has been filed by the workman only claiming reinstatement in service and the workman in his cross-examination has admitted about the initiation of the enquiry for misappropriation of money and during the pendency of the enquiry, the workman submitted his resignation on 09.03.1994 voluntarily and after revocation of put off duty, the resignation of the workman was accepted on 30.01.1995 and charge was handed over by the workman voluntarily without any protest as per the document, Ext.-M6 and the contention of the workman that he had withdrawn his resignation has not been proved by the workman, hence question of termination does not arise at all and hence, the reference is to be answered in the negative and the reference *vide* order dated 16.03.1998 is a belated reference and in view of the settled law that belated claim of reference is to be dismissed and therefore, on this count also, the reference is to be answered in negative.

9. Before delving into the merit of the case, I think it proper to deal with the objection raised by party no. 1 that the department of post is not an industry and its employees are not workman, under the provisions of the Act, so the reference is outside the jurisdiction of the Tribunal.

In this regard, I think it proper to refer to the decision of the Hon'ble Apex Court reported in AIR 1998 SC 656 (G.M. Telecom *Vs.* A Srinivasa Rao) (a bench of three Hon'ble Judges). The Hon'ble Apex Court in the above mentioned judgment haveover ruled the earlier judgment of the Hon'ble Apex Court in which, it was held that postal department is not an industry. Applying the principles laid down by the Hon'ble Apex Court in the decision reported in AIR 1998 SC-656 (Supra) and (1978) 2 SCC-213 (Bangalore Water

Supply and Sewerage Board *Vs.* V. Rajappa) to the present case in hand, it is held that the department of post is an industry and its employees are workman. So, the objection raised by the party No. 1 on that score fails.

10. In this case, after going through the materials on record including the pleadings, evidence, both oral and documentary and after taking into consideration the submissions made by the learned advocate for the parties, it is found that the workman was working as the Extra Departmental Branch Post Master of Temburkheda branch post office and while an enquiry was pending against him for misappropriation of government fund and he was on put off duty, he submitted his resignation by letter dated 09.03.2004, which was written and signed by him and he sent the same directly to the sub-divisional office, Morshi by post and his put off order was revoked by order dated 27.01.1995 and his resignation was accepted by the management on 30.01.1995 and the workman handed over the charge of the post office on 02.02.1995 (as per the own admission of the workman in the cross-examination and the documents, Exts M-3 to M-6).

10. According to the workman, he was forced to submit the resignation by Shri Dhekate, the SDI of Morshi and though he had submitted the application dated 21.05.1994 to cancel his resignation and to treat the same as withdrawn, no action was taken on the same and inview of the same, his removal from services is illegal, unjustified and against the principles of natural justice.

11. At this juncture, I think it proper to mention that it is well settled by the Hon'ble Courts in a number of decisions that evidence tendered in court should be based on claim statement and court have be alert on this and inconsistent stand of party in court will not bring in any result.

In this case, in the entire statement of claim, the workman has no where whispered a single word about withdrawal of his resignation by letter dated 21.05.1994. For the first time, in his evidence filed on affidavit before this Tribunal, the workman mentioned about submission of the letter for withdrawal of his resignation by letter dated 21.05.1994 and that too without filing any copy of such letter. In his evidence also, the workman did not mention as to when, as to how and to whom, he gave the letter dated 21.05.1994. In his examination-in-chief, he has only mentioned that "I further realized that the respondent may victimize me by way of accepting my resignation letter dated 09.03.1994, which was taken by force and coercion. Therefore, I gave application dated 21.05.1994 and requested to cancel his resignation letter dated 09.03.1994 and treated it as "withdrawn".

In his cross-examination, the workman has stated that he personally had gone to the Divisional Office for withdrawing the resignation and he must have the copy of the withdrawal letter and he has no reason as to why it is not on record and he handed over the resignation to the Sr. Suptd., Shri Raut and there was no reason for not accepting the letter and he did not send the same by post again and he did not complain to the higher authority about refusal as well as withdrawal of resignation.

After going through the evidence of the workman and the documents on record, it is clear that the workman has failed to show that he was forced to give the resignation or that he had submitted the letter dated 21.05.1994 to the authority for withdrawal of his resignation. If, actually, the workman had been forced to give the resignation and he had submitted the letter dated 21.05.1994 for withdrawal of his resignation, then he would not have given the charge of his post on 02.02.1995 without any protest or raising any objection. If, actually the workman had submitted the letter dated 21.05.1994 to party No. 1, then he would have definitely pleaded such an important fact in the statement of claim. It is clear from the materials on record that the plea of the workman that he had submitted the application dated 21.05.1994 for withdrawal of the resignation is an afterthought to suit his claim.

It is clear from the materials on record and the discussions made above that the workman voluntarily submitted his resignation on 09.03.1994 and the party No. 1 rightly accepted the resignation on 30.01.1995. As this is a case of acceptance of the voluntary resignation of the workman, there is no question of giving him any pre-notice or notice pay in lieu of notice or retrenchment compensation. Hence, it is ordered:—

**ORDER**

The reference is answered in negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 फरवरी, 2014

**का॰आ॰ 785.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ़ पोस्ट ऑफिस, डिपार्टमेंट ऑफ़ पोस्ट, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/07/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं॰ एल-40012/124/2004-आईआर(डीयू)]
पी॰ के॰ वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 13th February, 2014

**S.O. 785.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT/

NGP/07/2005) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Sr. Supdtt. of Post Offices, Department of Post, Nagpur and their workman, which was received by the Central Government on 05/02/2014.

[No. L-40012/124/2004-IR(DU)]
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/07/2005 Date: 31.07.2013.

**Party No. 1** : The Sr. Supdtt. Of Post Offices, Department of Post, Nagpur Nofussil Division, Dhantoli, Nagpur.

**Party No. 2** : Shri Govind T. Shivankar, R/o Juna Futala, Near Hanuman Mandir, Amravati Road, Nagpur (M.S.).

**AWARD**

(Dated: July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Department of Post and their workman, Shri Govind Tukaram Shivankar, for adjudication, as per letter No. L-40012/124/2004-IR(DU) dated 04.01.2005, with the following schedule:—

> "Whether the action of the management of Department of Post, Nagpur (MS) in awarding the punishment of dismissal from services vide order dated 08.10.1985 to Shri Govinda Tukaram Shivankar, Ex-Departmental Post Master, Mokhebardi Branch Post Office, is justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Govinda Tukaram Shivankar, ("the workman" in short) filed the statement of claim and the management of Department of Post ("party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he came to be appointed as a branch post master at Mokheburdi Sub-post Office of Nagpur District on 23.12.1978 and while he was working as such, on 13.09.1983, the Assistant Superintendent of post offices inspected the Post Office at Mukherburdi and found a sum of Rs. 3,277.75 missing and as such, a report was lodged against him in the police station, Waltur and case under Section 409, 467, 471 of the Indian Penal Code was registered against him and police filed three cases against him in the court of the Chief Judicial Magistrate at Nagpur and in all the three cases, he was acquitted by orders dated 27.05.2002, 28.05.2002 and 29.05.2002 and during the pendency of the trial of the criminal cases, due to the persuasion of Party No. 1, his father deposited the amount of Rs. 3,277.75 with Party No. 1, without his knowledge and consent, on the assumption that he (workman) would be saved from possible trouble. The further case of the workman is that the claim of Party 1 that he did not attend the departmental enquiry and that his father was a witness for the prosecution in the enquiry is false and his father is illiterate and signatures of his father were taken on blank paper by Party No. 1, with false promise that his service would be protected and the Party No. 1 conducted the enquiry *ex-parte*, in violation of the principles of natural justice. It is further pleaded by the Party No. 1 that after his acquittal in the criminal cases, on 13.03.2003, he made a representation to the Party No. 1 praying for his re-instatement and refund of the amount of Rs. 3,277.75, which was deposited by his father, but there was no response from the Party No. 1 and the contention of Party No. 1 that the court while acquitting him, did not direct for his reinstatement in service is quite wrong, as a criminal court cannot give such direction and it is settled law that if an employee is acquitted of criminal charges, he is entitled to be reinstated in service with all consequential benefits and as the Party No. 1 did not accept his prayer for reinstatement, he approached the Labour Commissioner (Central) for conciliation and upon failure of conciliation, the case has been referred to the Tribunal for adjudication.

The workman has prayed to answer the reference in his favour and against the Party No. 1.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the workman did not work as Branch Post Master of Mokheburde up to 30.08.1983 and while working as the Branch Post Master of Mokheburde Branch Office, he absconded with office cash of Rs. 877.75p since 22.08.1983 and the then Assistant Superintendent of post offices investigated into the matter and during the investigation, it was found that on 22.08.1983, the workman left the post office with the cash and then remained absent and he had misappropriated government money to the tune of Rs. 3,277.75p and therefore, a complaint was lodged against him at the police station of Waltur for misappropriation of S.B/R.D. amount and after completion of investigation, police filed charge-sheet against the workman in the court of Umrer and later on, the cases were transferred to the court of Chief Judicial Magistrate, Nagpur and the workman was acquitted by the court, because the prosecution witnesses, who were the residents of

Mokheburde village, did not support the prosecution case. It is further pleaded by Party No. 1 that father of the workman was aware of the fact that his son was absconding from duty with government money, hence he credited the amount of Rs. 3,277.75p voluntarily and they had never persuaded him to deposit the amount and disciplinary action under Rule 8 of E D A (Conduct and Service) Rules, 1964 was instituted against the workman on 02.04.1985 and he was charge- sheeted for absconding with office cash of Rs. 877.75p since 22.08.1983 and the charge- sheet was delivered to the workman on 16.04.1985, but he did not reply to the charge sheet, so an enquiry officer was appointed on 16.06.1985 to enquire into the charges and the Enquiry Officer started the enquiry proceedings, but the workman did not attend the enquiry proceedings, hence the Enquiry Officer conducted the enquiry ex-parte and there was no irregularity or illegality in the enquiry and after due enquiry and recording the statement of witnesses, the Enquiry Officer held the charges leveled against the workman to have been proved on the basis of documentary and oral evidence produced during the course of the enquiry and the enquiry was finalized on 08.10.1985 and the workman was dismissed from service with immediate effect from 08.10.1985 and the copy of the punishment order as delivered to the workman on 24.10.1985 as per acknowledgement available on records and the workman did not prefer any appeal before the Competent Authority for redressal of his grievances.

Party No. 1 has further pleaded that they did not receive any representation dated 13.03.2003 submitted by the workman and criminal case and departmental enquiry are different matters and the charges in the criminal case and departmental enquiry were different and the charges in the departmental enquiry was proved on the basis of the documentary and oral evidence and an appropriate punishment was awarded against the workman keeping in view the gravity of the charge and as such, the workman cannot be reinstated in service.

4. As this is a case of dismissal of the workman from services after conducting of a departmental enquiry, the validity of the enquiry was taken up as a preliminary issue for consideration and by order dated 12.11.1012, the departmental enquiry was held to be legal proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that in the departmental enquiry, the charge has not been established and proved and bare perusal of the enquiry report will reveal that it is illegible and consists of two pages only and the enquiry officer has not recorded the statement and documents have not been exhibited and it is settled position of law that the Tribunal cannot travel beyond the scope of the reference and the Tribunal has to either answer the reference in affirmation or in negative and the issue about delay and latches cannot be raised and after the enquiry was over, management did not issue any show cause notice to the workman calling upon his comments on the so called enquiry and its report and non-issuance of show cause notice after conducting enquiry was not only illegal, but also took away his rights of giving his say on the enquiry report and as such, the enquiry is vitiated and the dismissal order needs to be set aside and the workman is entitled for reinstatement in service, full back wages and all other consequential benefits.

6. In reply, it was submitted by the learned advocate for the party No. 1 that *vide* order dated 12.11.2012, it has already been held by the Tribunal that the departmental enquiry held against the workman is legal, proper and in accordance with the principles of natural justice and there is no evidence on record to show that the punishment imposed on the workman does not commensurate to the charges levelled against him and in absence of such evidence, it can be held that the punishment is proper, legal and justified and the workman was holding a public post and discharging public duty and misappropriation of amount shakes the confidence of the public at large and considering the proved misconduct in a properly held departmental enquiry, the punishment of dismissal of the workman from services is justified and the workman is not entitled to any relief.

7. During the course of argument (in the written notes of argument) much stress was given by the learned advocate for the workman regarding the acquittal of the workman in the criminal cases instituted against him. It was submitted that the charge levelled in the departmental enquiry and the charge in the criminal cases were one and the same and thus no enquiry could have been conducted by the management, as it would have disclosed the nature of the defence of the workman and upon acquittal from criminal cases, the workman represented for his reinstatement, but no fruitful result was yielded and the stand of the management that the workman has been acquitted but not exonerated holds no water and in view of the acquittal of the workman in the criminal cases, he should have been reinstated in service.

8. At this juncture, it is to be mentioned that while considering the preliminary issue, the question of initiation of the departmental proceeding during the pendency of the criminal case against the workman was considered and it was held that the charges levelled against the workman in the departmental enquiry and criminal cases were not one and the same and the departmental proceedings and criminal case can proceed simultaneously, as there is no bar in their being conducted simultaneously.

So far the question of considering of the reinstatement of the workman after his acquittal in the criminal cases is concerned, I think it proper to mention the well settled principles in this regard by the Hon'ble Apex Court as

reported in (2012) I SCC-442 (Karnatak S.R.T.C. *Vs*. M.V. Vittal). The Hon'ble Apex Court have held that:—

> "Held, question of considering reinstatement after decision of acquittal or discharge by a complaint Criminal Court arises only and only if dismissal from services was based on conviction by criminal court in view of provisions of Art. 311(2) second proviso (a) of constitution or analogous provisions in statutory rules applicable in a case. In case where enquiry is independent of criminal proceedings, acquittal in criminal court as of no help. Even if a person stands acquittal in a criminal court, domestic enquiry can be held, since standard of proof required in a domestic enquiry and that in a criminal case are different."

In the case in hand, the dismissal of the workman was not based on his conviction in the criminal case. The enquiry was independent of the criminal proceedings. So the acquittal of the workman in the criminal case is of no help to him.

9. Before delving in to the merit of the matters, it is to be mentioned here that it is well settled by the Hon'ble Apex Court in a series of decisions that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or the competent authority where they are not arbitrary or utterly perverse and if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

Keeping in view the above settled principles, now, the case in hand is to be considered.

After perusing the material on record including the papers of the departmental enquiry and taking into consideration the submissions made by the learned advocates for the parties, it is found that the enquiry officer has arrived at the conclusions by analyzing the evidence adduced in the departmental proceeding systematically and so also in a rational manner. The findings of the enquiry officer are based on the materials on record of the enquiry proceedings and not on any extraneous consideration. It is also found that this is not a case of no evidence or that the findings of the enquiry officer are based on no evidence. The findings of the enquiry officer are not as such, which could not have been reached by a prudent man on the materials available on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So, for the proportionality of the punishment is concerned, it is found that serious and grave misconduct of misappropriation of money has been proved against the workman in a properly conducted departmental enquiry and therefore, there is no question of consideration of the past record of the workman. The punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate to the serious misconduct proved against him. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

**ORDER**

The action of the management of Department of Post, Nagpur (MS) in awarding the punishment of dismissal from services *vide* order dated 08.10.1985 to Shri Govinda Tukaram Shivankar, Ex-Departmental Post Master, Mokhebardi Branch Post Office, is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 14 फरवरी, 2014

**का॰आ॰ 786.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट (संदर्भ संख्या 60/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2014 को प्राप्त हुआ था।

[सं॰ एल-41012/36/2011-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th February, 2014

**S.O. 786.**—In pursuance of Section 17 of the Indutrial Disputes Act,1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 60/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 14.02.2014.

[No. L-41012/36/2011-IR(B-I)]
SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI**

**Thursday, the 30th January, 2014**

**Present:** K.P. Prasanna Kumari, Presiding Officer

**Industrial Dispute No. 60/2011**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section

10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workman]

**BETWEEN**

Smt. K. Jalaja — 1st Party/Petitioner

AND

1. The Divisional Railway Manager (Personnel)
   Park Town, Office of the General Manager
   Southern Railway
   Chennai-600001
2. The Finance Advisor and Chief Acctts. Offr.
   Office of the G.M., Park Town,
   Southern Railway
   Chennai-600001 — 2nd party/2nd Respondent

**APPEARANCE**

For the 1st Party/Petitioner : Sri G. Elangovan, Advocate

For the 2nd Party/1st and 2nd Management : Shri P. Srinivasan, Advocate

**AWARD**

The Central Government, Ministry of Labour and Employment *vide* its Order No. L-41012/36/2011-IR(B-I) dated 27.07.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Southern Railway in imposing the penalty of compulsory retirement from service w.e.f. 06.09.2000 on Smt. K. Jalaja vide their order dated 12.03.2001, is leval and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 60/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are these:

The petitioner had joined the service of the Railways as Junior Accounts Clerk in the Southern Railways on 03.07.1978. She was promoted to the post of Head Cleark in 1985. This post was later re-designated as Accounts Assistant. Due to health problems the petitioner had to undergo treatment and had been absent from work. The Railways had initiated departmental action for her absence. A farce of an enquiry was conducted after setting the petitioner *ex-parte*. On the basis of the report of the enquiry the petitioner was removed from service. On appeal the punishment was modified to Compulsory Retirement. The petitioner challenged the order before the Central Administrative Tribunal, Madras bench. The Tribunal found that the enquiry was not conducted in fair and proper manner and directed reinstatement of the petitioner. The petitioner joined duty on 16.11.2002 on the basis of the direction of the Central Administrative Tribunal. The Railways again proceeded against the petitioner for her absence and a charge sheet was issued against her. An *ex-parte* enquiry was against conducted against the petitioner and she was found guilty. The Disciplinary Authority dismissed the petitioner from service on the basis of the enquiry report on 23.07.2007. The appeal filed by the petitioner was also dismissed. On 09.10.2006 the petitioner had applied for Voluntary Retirement on medical grounds after her service for more than 25 years. But it was not accepted. The action of the railways against the petitioner is arbitrary, vindictive and against principles of natural justice. The punishment imposed on the petitioner is harsh and excessive. The charges leveled against her were not proved. The Respondent may be directed to initiate conciliation under the industrial Disputes Act and settle the matter by recalling their records and permit the petitioner to retire from service voluntarily.

4. The Respondent has filed Counter statement contending as follows:

The petitioner was appointed in the Railways as Clerk Grade-II and not as Junior Accounts Assistant. The petitioner was a habitual absentee from work and was intentional defaulter of bank loans availed by her without the knowledge of the Administration. On financial transactions of the petitioner having been brought to the notice of the Railways, action has been taken up under the Railway Servants (Discipline and Appeal) Rules besides reporting to the State Police Authorities. Charge Sheet was issued to the petitioner for unauthorized absence from 07.05.1997 to 05.05.1998 and 07.01.2000 to 28.02.2000 and for entering into financial transactions with a number of private and public sector banks without permission. Enquiry was conducted against the petitioner and she was removed from service based on the enquiry report. On appeal by the petitioner the penalty was modified as Compulsory Retirement on humanitarian grounds. The petitioner had challenged the order before the Central Administrative Tribunal and the Tribunal had directed her reinstatement in service. However, the Tribunal had permitted the Railways to conduct enquiry in accordance with law. The petitioner was reinstated in service on the basis of the direction of the Central Administrative Tribunal Subsequently, departmental enquiry was conducted against her in compliance with the prescribed procedure. Even though notice of enquiry was given to the petitioner, she has not turned up for the enquiry. All the notices sent to her were returned with the endorsement that the addressee is not in the address. To a reminder sent to the petitioner, she had replied stating that she was not well. In the new address given by her in this letter also she was asked to attend the enquiry. This was also returned as she was not in the address. Ultimately, enquiry had to be conducted *ex-parte*

as the petitioner did not turn up for the enquiry. Based on the enquriy report the penalty of dismissal from service *w.e.f.* 23.07.2007 was imposed on the petitioner. The appeal filed against this has been rejected. The petitioner is not entitled to any relief. The petiton is to be dismissed.

5. The evidence in the case consists of the oral evidence of WW1, MW1 and documents marked as Ex. W1 to Ext. W51 and Ext.M 1 to Ext. M24.

6. **The points for consideration are:**

(i) Whether the punishment imposed on the petitioner is legal and justifield?

(ii) What is the relief to which the petitioner is entitled?

**The Points**

7. The petitioner, a railway employees had been proceeded against departmentally for the unauthorized absence from duty and also due to her financial transactions by way or borrowing from financial institutions without disclosing them to the employer. The report of the enquiry was aginst the petitioner and she was dismissed from service by order dated 23.07.2007. The appeal and revision filed by her were dismissed. The petitioner has raised the Industrial Dispute and consequently it has been referred to this Tribunal for adjudication.

8. The petitioner was proceeded against on an earlier occasion for the same charges and she was removed from service by the Disciplinary Authority on her finding guilty. On appeal preferred by her, the punishment has been modified to one of Compulsory Retirement on her approaching the CAT challenging this order, the CAT held that the enquiry against her was not conducted in fair and proper manner. The Tribunal had directed that she should be reinstated in service with back wages. At the same time the Tribunal made it clear that the employer is at liberty to proceed against the petitioner complying with the prescribed procedure. In accordance with the order of the CAT the petitioner was reinstated in service and her back wages were paid also. At the same time, the Railways, her employer again initiated proceedings against her by issuing Charge Sheet. An enquiry was conducted and she was found guilty of the charges a second time. It was consequently she was dismissed from service. The present reference is on the basis of the dispute raised by her challenging the second order of dismissal. The petitioner has stated that the second enquiry conducted against her also was not in fair and proper manner. She has stated in her Claim Statement that the entire action of the Railway "is arbitrary, vindictive and contrary to principles of natural justice."

9. Though a contention regarding the fairness of the enquiry is seen raised in the Claim Statement, this is not seen pursued subsequently. The petitioner has not called upon this Court to enter a finding regarding the question of fairness of the enquiry before the matter has been considered on merits. The case was proceeded as if there is no challenge regarding the fairness of the enquiry at all.

10. On perusing the enquiry file which has been produced before this Court and marked as Ext. M40, it could be seen that there was no reason for the petitioner to make any challenge on this ground also. The enquiry is seen conducted fairly and properly. It is seen from the enquiry file that the enquiry was proceeded *ex-parte*. A perusal of the enquiry file reveals the repeated efforts made by the Enquiry Officer to reach the petitioner so that the enquiry could be conducted in her presence, with sufficient opportunity to her to meet the proceedings. What is to be made out from the record is that though the petitioner was reinstated in service and has rejoined duty she has subsequently absented herself without information to the employer. The Enquiry Officer seems to have sent several letters to the petitioner asking her to report for facing enquiry. The first letter informing her of the enquiry that was to take place on 14.10.2004 was returned undelivered with the endorsement by the postal authorities that she is not in the address. It is clear that the letter was sent in the address that was furnished by the petitioner as the residential address. The Enquiry Officer has then asked the employer to verify the records and furnish the correct address. Having been assured that the address to which communication was sent was correct, he has sent another registered letter and this was also returned with the endorsement that the party has left. In the meanwhile, the Administration has forwarded to him a copy of letter sent by the petitioner showing another address. The Enquiry Officer has then proceeded to send a letter to th petitioner in this address given in her letter. The petitioner seems to have received this and has sent a telegram stating that she is ill and is advised bed rest and is unable to attend the enquiry. Her telegram was followed by a letter, again, stating her inability to attend the enquiry because of her health condition. However, she did not find it necessary to enclose a medical certificate alongwith the letter. The Enquiry Officer had again sent registered letter informing her that the enquiry is fixed on 29.04.2005. However, this letter was returned with the endorsement that the addressee has left. Inspite of this, the Enquiry Officer has again postponed the enquiry and has sent registered letter to her again. Two more such registered letters were addressed and these also met with the same fate. Ultimately, the Enquiry Officer had no other option but to proceed with the enquiry *ex-parte.* He had commenced the *ex-parte* enquiry on 30.06.2005. Thus it could be seen that every precaution has been taken by the Enquiry Officer to see that the petitioner has the opportunity to contest the proceedings initiated against her. Though it was the second enquiry initiated consequent to the challenging of the first one and the administrative tribunal ordering ex-enquiry, the petitioner had not taken it in the seriousness that was required.

11. On going through the file of the enquiry proceedings, it could be seen that even though the enquiry was an-exparte one, the management had placed all the relevant documents and examined the required witnesses before the Enquiry Officer. In all 6 witnesses were examined to prove the charges against the petitioner.

12. What actually were the charges alleged against the petitioner? The first charge is that she had unauthorizedly absented from duty from 07.05.1997 to 05.05.1998 and again from 07.01.2000 to 28.02.2000. The second charge is that she entered into financial transctions with several financial institutions and failed to intimate the transaction entered into by her to the Railway Administration, though the rules required it. The last charge is that she has borrowed Rs. 1.00 lakh from a private individual and have issued a cheque and this cheque has been dishonoured resulting in a criminal case having been filed against her.

13. Regarding the absence of the petitioner from duty, a perusal of the Claim Statement itself would show that the petitioner does not have a specific case regarding her absence. She has stated in the Claim Statement that she was suffering from health problems and consequently she have been absent for some time. She has not stated whether she had applied for leave and leave has been sanctioned or whether she was absent unauthorizedly as alleged by the Respondent. The relevant Attendance Registers were marked before the Enquiry Officer and the Officer Incharge of the registers were examined also. These registers and the evidence showed that the petitioner was anuthorizedly absent from 07.05.1997 to 30.06.1997, 01.09.1997 to 14.11.1997 and from 07.01.2000 to 28.02.2000. however, the documents showing her absence from 17th November, 1997 to April 1998 were not produced. On the basis of this the Enquiry Officer has found that the charge of unauthorized absence is partially proved. The Enquriy Officer has reached this finding based on the document and also the evidence of the witnesses. There is no reason to differ from this finding of the Enquiry Officer.

14. The witness examined as SW5 before the Enquiry Officer and the documents marked through him had revealed that the petitioner had financial transaction with some financial institutions. It was revealed by SW5 that intimation regarding this transactions were not given by the petitioner to the Administration. So this charge also was justifiably found by the Enquiry Officer to be proved.

15. Regarding the last charge, the non-bailable arrest warrant issued against the petitioner in the criminal case initiated against her for offence under Section-138 of Negotiable Instruments Act has been produced and marked before the Enquiry Officer. It could be seen that the financial transactions entered into were without any intimation to the employer though she was bound to do so. In the circumstances there is no reason to vary from the finding entered by the Enquiry Officer in this respect also.

16. In fact the petitioner seems to be not much bothered about the findings entered by the Enquiry Officer on enquiry. She is bothered about the punishment imposed on her consequent to the report of the enquiry only. The prayer of the petitioner in the Claim Statement is that orders may be passed for her retirement from service with attendant benefits. While the enquiry proceedings were going on the petitioner seems to have written to the Respondent for permission for voluntary retirement on medical grounds. This seems to have been rejected.

17. The only question that now remains for consideration is whether the punishment that was imposed on the petitioner is too harsh and not in proportion to the nature of the offence that was committed by her. In this respect the very nature of the offence that are alleged against her are to be considered. The main charge against the petitioner is that she had been unauthorizedly absent from duty for a long period. The petitioner, who did not contest the enquiry or produce any documents in justification of her absence has produced some documents before this Court showing that she was having some illness. It seems, even before she joined service, she had an open heart surgery, as revealed from Ext. W2. As seen from Extn. W10 she had another surgery in 2000 by which her uterus was removed. For the offence of unauthorized absence of a person who had been in continuous service for more than 25 years one need not face the punishment of removal from service itself. The other charge against the petitioner is that she was entering into financial transactions without intimation to the Administration. Certainly, she seems to have been mismanaging her financial affairs. Even if this is taken into account she need not meet the fate of a dismissal from service. From the very charge it is seen that the total amount of loan availed by the petitioner from the different financial transactions comes to less than Rs. 35,000/-. Then there is the amount of One Lakh borrowed by her resulting in a criminal case having been initiated against her. But the major penalty of dismissal from service need not have been imposed on her on this account also.

18. In fact initially also the petitioner was proceeded against for the same charges consequent to which she was dismissed from service. However, earlier the petitioner though removed from service by the Disciplinary Authority, this order has been modified by the Appellate Authority to one of Compulsory Retirement from service. This previous order itself would show that Compulsory Retirement itself is a sufficient punishment for the offences committed by the petitioner. Probably because she had challenged the previous order and succeeded in getting an order of reinstatement, the concerned authorities had refused to consider her request to modify the order and reduce the rigour of the order by converting into one of compulsory retirement thus providing her some means of sustaining herself also. This fact also constrains me to find that the punishment imposed on the petitioner is somewhat harsh

and is liable to be modified. I find that Compulsory Retirement will be punishment in proportion to the offences committed.

19. Accordingly, the punishment imposed on the petitioner is modified and is converted into Compulsory Retirement from service *w.e.f.* 23.07.2007. The petitioner will be entitled to pensionery and other benefits from 23.07.2007.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th January, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1st Party/Petitioner : WW1, Mrs. K. Jalaja

For the 2nd Party/1st & 2nd Management : MW1, Sri N. Vijayraghavan

**Documents Marked:**
**On the petitioner's side**

| Ex.No. | Date | Description |
|---|---|---|
| Ex.W1 | 27.09.1978 | Appointment Order |
| Ex. W2 | 15.02.1978 | RH/PER-Open Heart Surgery Report |
| Ex. W3 | 29.12.1999 | Scan Report |
| Ex. W4 | 05.01.2000 | Advocate Notice-K Perumal Swamy |
| Ex. W5 | 25.01.2000 | Leave Letter |
| Ex. W6 | 01.02.2000 | Leave Letter |
| Ex. W7 | 10.02.2000 | Private Medical Certificate |
| Ex. W8 | 19.01.2000 | Arrest Warrant, NBW |
| Ex. W9 | 10.01.2000 | Recall Intimation |
| Ex. W10 | 01.03.2000 | Railway Medical Certificates of Operation Summay (Uterus Removal) 28.02.2000 to 15.04.2000 |
| Ex. W11 | 12.03.2001 | Charge Sheet |
| Ex. W12 | 18.08.2000 | Charge Sheet |
| Ex. W13 | 06.09.2000 | Penalty Advice Charges |
| Ex. W14 | 25.04.2001 | Revision Petition |
| Ex. W15 | 31.10.2002 | CAT Order to GM/S. Railway |
| Ex. W16 | 06.11.2002 | CAT Order to FA & CAO/MAS |
| Ex. W17 | 04.10.2002 | CAT Judgement Order |
| Ex. W18 | 18.11.2002 | Re-Appointment Order |
| Ex. W19 | 14.12.2002 | Railway Medical Certificates |
| Ex. W20 | 16.12.2002 | Re-joining report |
| Ex. W21 | 17.01.2003 | Monthly Salary |
| Ex. W22 | 25.03.2003 | Charge Sheet |
| Ex. W23 | 31.03.2003 | Charge Sheet |
| Ex. W24 | 16.04.2003 | Charge Sheet |
| Ex. W25 | 09.05.2003 | Charge Sheet |
| Ex. W26 | 10.06.2003 | Enquiry Officer-Information |
| Ex. W27 | 29.08.2003 | Karnataka Bank Letter—Reply |
| Ex. W28 | 16.09.2003 | Arrears of Pay—Reminder |
| Ex. W29 | 28.10.2003 | Arrears of Pay-55% Order |
| Ex. W30 | 25.09.2004 | Railway Medical Certificate |
| Ex. W31 | 23.07.2007 | Railway letters received Residential address |
| Ex. W32 | 04.07.2007 | Railway Employees Co. Op. Credit Society Letter |
| Ex. W33 | 21.03.2005 | Enquiry Information Letter |
| Ex. W34 | 09.10.2006 | VRS—Letter |
| Ex. W35 | 29.12.2006 | VRS—Reply |
| Ex. W36 | 12.07.2007 | Charge Sheet |
| Ex. W37 | 21.07.2007 | Charge Sheet—Reply |
| Ex. W38 | 10.08.2007 | Removal Order |
| Ex. W39 | 20.08.2007 | Appeal Order |
| Ex. W40 | 23.08.2007 | Termination Order |
| Ex. W41 | 24.09.2007 | Appeal Reply |
| Ex. W42 | 26.02.2003 | Karnataka Bank-Pass Book Xerox |
| Ex. W43 | 21.07.2011 | Karnataka Bank-Receipts |
| Ex. W44 | 02.02.1999 | Sriram Chits of Inv. Ltd. Closure Letter |
| Ex. W45 | 21.12.2010 | Asstt. Labour Commission—Reply FA/CAO/MAS |
| Ex. W46 | 04.03.2011 | Asstt/ Labour Commission—Reply |
| Ex. W47 | 02.02.2011 | Asstt/ Labour Commission—Reply |
| Ex. W48 | 01.04.2011 | Asstt/ Labour Commission—Reply |
| Ex. W49 | 27.07.2011 | Govt. of India, Ministry of Labour—Order |
| Ex. W50 | 05.08.2011 | Govt. of India, Ministry of Labour—Order |
| Ex. W51 | 30.08.2011 | Karnataka Bank Closure Letter |

**On the Management's side**

| Ex. No. | Date | Description |
|---|---|---|
| Ex. M1 | - | Initial Appointment Order |
| Ex. M2 | - | Complaint letters from PSBs/Pvt. Banks/NBFCs received from SDGM & CVO/Vigilance Department/ Southern Railway |
| Ex. M3 | - | Standard Form-5 (Charge Memorandum) with Charges of imputation dated 17.03.2003 |
| Ex. M4 | - | Penality imposed by Disciplinary Authority dated 06.09.2000 |
| Ex. M5 | - | Appeal to Appellate Authority/ Revision Authority and disposal dated 12.03.2001 |
| Ex. M6 | - | Hon'ble Tribunal's orders dated 06.11.2002 |

| Ex. No. | Date | Description |
|---|---|---|
| Ex. M7 | - | Orders of reinstatement dated 06.11.2002 and record for payment of arrears |
| Ex. M8 | - | Letter to the charged official (CO) for Preliminary Inquiry dated 30.09.2004, 03.11.2004 and 09.12.2004 |
| Ex. M9 | - | Reminders to the CO dated 24.12.2004 and 04.02.2005 |
| Ex. M10 | - | Letters to CO advising non-acceptance of Voluntary Retirement dated 29.12.2006 |
| Ex. M11 | - | Letters to CO for attending to main inquiry dated 15.04.2005 |
| Ex. M12 | - | Letters/Reminders to CO for inquiry dated 03.05.2005 and 20.05.2005 |
| Ex. M13 | - | Letter for CO before ex-parte final chance dated 15.06.2005 |
| Ex. M14 | - | Inquiry report by Inquiry Officer dated 02.03.2006 |
| Ex. M15 | - | Penality imposed by the Disciplinary Authority dated 23.07.2007 |
| Ex. M16 | - | Appeal by the CO to the Appellate Authority dated 20.08.2007 |
| Ex. M17 | - | Disposal of Appeal by the Appellate dated 19.08.2007 |
| Ex. M18 | - | CO's appeal to Revision Authority dated 05.01.2007 |
| Ex. M19 | - | Disposal by Revision Authority dated 25.08.2007 and 21.07.2009 |
| Ex. M20 | - | Complaint to City Crime Branch/ Economic Offence/Egmore by Dy. CAO/General/S. Railway dated 24.05.2007, 23.07.2007 and 30.07.2007 |
| Ex. M21 | - | Replies on various dated to ALC (C)/ Chennai for conciliation meetings dated 21.12.2010, 02.02.2011, 28.02.2011 and 01.04.2011 |
| Ex. M22 | - | Reply to Railway Board *w.r.t.* Ministry of Labour, New Delhi dated 28.06.2011 |
| Ex. M23 | - | Copy of the Ex-employee's Service Register showing regular absenteeism since 1995 |
| Ex. M24 | - | Ex-Employees' statement to ALC(C) Chennai wherein she has accepted that she was arrested and remanded by City Police, Economic Offences Wing/Chennai |

नई दिल्ली, 14 फरवरी, 2014

**का॰आ॰ 787.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 808/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41012/101/2003-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th February, 2014

**S.O. 787.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 808/ 2004) of the Central Government Industrial Tribunal - cum Labour Court Ahmedabad, as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workman, received by the Central Government on 14/02/2014

[No. L-41012/101/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

**PRESENT :**
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated: 12th December, 2013

Reference: (CGITA) No-808 of 2004
Reference ITC No: 20/2003 (Old)

1. The Divisional Railway Manager,
   Western Railway, Divisional Office,
   Pratap Nagar, Baroda-390004

2. The Divisional Railway Manager,
   Western Railway, Ahmedabad ....First Party

AND

Their Workman
Shri Mansukh Chhena
Through the General Secretary, P.R.K.P.
E-209, Sarvotam Nagar, Behind New Rly Colony,
Sabarmati, Ahmedabad ...Second Party

For the 1st Party No. 1: Shri Rajesh Singh Thakur, Advocate

For the 1st Party No. 2: None

For the 2nd party : Shri Raghuvir Singh Sisodia, General Secretary, (P.R.K.P.)

**AWARD**

The Central Government/Ministry of Labour, New Delhi vide its Order No. L-41012/101/2003-IR(B-I) dated 30.06.2003 in exercise of powers confered by clause (d) of

sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to the Industrial Tribunal, Baroda on the terms of reference in the schedule:

**SCHEDULE**

"Whether the action of the management of divisional Railway Manager, Western Railway, Baroda, in removing from services to Shri Mansukh Chenna, with effect from 23.01.2001 after imposing the penalty is justified? If not, what relief the workman is entitled for and since when?

2. The case of the (2nd party) as per statement of claim dated 21.12.2004 is that Mansukhbhai Chenna was Rly employee and working at Dhrangadhara Rly Station under station superintendent as box boy coming under jurisdiction of DRM (W.R), Vadodara. He was S.C. employee and was office bearer of western Railway employees Union from 1993. Once station Sptd. Dhrangadhara directed Gateman Harijan Vanker and Mulji Pitamber to work as running room safaiwala to which they refused to work and they were threatened by station suptd. then both employee approached to Mansukhbhai Chenna that station supt. Is not taking them on duty. Then Mansukh approached to station suptd. regarding such complaint of those two employee. But station supt. abused Mansukh and get him out. Other employees tried to understand S.S. but he challenged them and called unpartiamentry languages Bhangi Mansukh files complaint in court on 23.04.1993 *vide* 24/93 under SC/ST Act. Further case is that there was notice for filling up vacancy of ticket collector post and Mansukh and three other Rly. Employee of Dhrangadhara station-namely Jayendra B. Shukla, Ravind D. Joshi and Hembhai R. filled form for the post of T.C. and written test for the post of T.C. was scheduled on 03.06.1995 for this notice received by station superintendent Dhrangadhara. But station suptd. did not call Mansukh who was on duty on 02.06.1995 and did not issue him memo as well as pass for appearing in written test of T.C. at Vadodara on 03.06.1995, but other employees were given memo and pass. Mansukh approached to station supdt. for issuing memo and pass but he was abused by station superintendent and drove out Mansukh forcibly. Mansukh wrote complaint in SC/ST complaint book at Dhranghadhara station. Later on due to ailment of parents and elder brother and for meeting expenses in treatment, Mansukh applied for from P.F. but P.F. advance was not received by him till 23.08.1995 in spite of assurance given by the station suptd. Due to non-availability of money from P.F. advances the parents and elder brother of Mansukh died one after another for want of purchase of medicine for proper treatment. Thereafter Mansukh gave notice in September,1995 to Divisional Personnel Officer and Divisional Operating Manger W.R. Vadodara to go on hunger strike after one month along with family. Even after expiry of one month no reply received from Rly. Administration, then workman Mansukh Chhena sat on 04.10.1995, in front of station suptd.'s office on hunger strike. After three days of hunger strike, Divisional Safety officer, Vadodara, came to Dhranghadhara and threatened to Mansukh Chhena to call off hunger strike otherwise he will be removed from the services. Due to three days hunger strike his family was sent to Hospital for treatment in Ambulance sent by Collector, Surendranagar. Thereafter on coming to Dhrangadhara of Divisional Personnel Officer, Vadodara and on his giving assurance in writing, Mansukh left hunger strike on 06.10.1995. But in spite of written agreement it was not implemented by the Rly. Administration Mansukh was harassed in false in criminal case and on trial he was acquitted. The Rly. Administration became adamant to punish him due to continuing of making complaint by Mansukh and he was transferred to Palej as per letter no. ET/2A/310/ ET-M/127 dated 01.11.1996. But when transfer order received by station superintendent Mansukh was not taken on duty. He also requested to cancel his transfer order but of no avail and he was hand to mouth due to non-receipt of payment. Thereafter a chargesheet SFS No. E308/ OPg/P dated 17.04.1999 was issued showing his unauthorised absent from duty. Enquiry was conducted in biased manner and without giving proper opportunity he was removed from service which has caused suffering to him and his family economically, mentally and socially. The action of the Rly. Administration is illegal, improper and unjust. On these scores relief has been sought for declaring removal of Mansukh illegal, improper and unjust, for his reinstatement with full back wages and consequential benefits with interest, cost and compensation.

3. lnspite of long pendency of the case for submitting written statement by the 1st party No. 1 from 02.02.2005 (since after filing of statement of claim on 21.12.2004) no written statement has been filed even on entrustment for conducting case of the 1st party executing powers in favour of Shri Rakesh Sharma, Advocate on 02.02.2005 then in favour of Shri Jatin J. Vakil, Advocate, Baroda on 13.05.2010 and lastly in favour of Shri Thakur Rajesh singh , Advocate on 03.07.2012.

4. Since 01.04.2003, New Rly. Division of Ahmedabad came into existence and Dhrangadhara Rly. Station came under jurisdiction of D.R.M., Ahmedabad so on filing of a pursis Ext. 9 dated 02.12.2011, D.R.>M. Ahmedabad was impleaded as 1st party No. 2 in the statement of claim by order passed below Ext. 9 and notice was issued to D.R.M. Ahmedabad for appearance, but 1st party No. 2 neither appear, nor filed Vakilpatra in favour of any Advocate of Railway Panel not filed written statement.

5. The concerned workman Mansukhbhai Chhena filed his affidavited examination in chief *vide* Ext. 7 and its copy received by Shri R.P. Sharma, then Railway Advocate on 07.10.2011. Thereafter Mansukh was cross examined by Shri R.P. Sharma Rly. Advocate for 1st party No. 1 on

13.01.2012. The 2nd party (Union) filed documents with list Ext. 10 and its copy furnished to 1st party No. 1 Advocate on 14.01.2012. The documents were taken in Exts —M-10/a to 10/M . The 2nd party closed its stage of evidence on 15.02.2012 *vide* Ext. 11. Thereafter case was being adjourned for leading evidence by the lst party. Thereafter on pursis of 2nd party (Ext. 15) the stage of the 1st party to lead evidence was ordered to be closed on 22.02.2013. Therafter, on the pursis filed by Shri Rajesh Singh Advocate for the 1st party No. 1 on 12.03.2013 (Ext. 16) stage to lead evidence by the 1st party was ordered to be reopened by passing order below Ext. 16. Then 1st party No .1 examined its witness Mrs. Indira N. Patel, Chief Office Suptd. D.R.M. office, Vadodara on 12.03.2013 (*vide* Ext. 17) was also cross examined by Shri R.S. Sisodia, G.S. P.R.K.P. (2nd party) thereafter on filing of pursis (Ext. 18) on 23.08.2013 the stage of evidence of Railway side (1st party) was closed and arguments of both sides were heard.

6. In view of rival contention of the parties—statement of claim and oral and documentary evidence of 2nd party *vis-a-vis* oral evidence of a witness of the 1st party No. 1, the following issues are taken up for consideration:

**ISSUES**

(I) Is the reference maintainable?

(II) Has the 2nd party valid cause of action in this case?

(III) Whether the management of the 1st Party validly conducted the departmental enquiry against the delinquent workman Mansukh Chhena observing all the norms of principles of natural justice?

(IV) Whether the order of punishment dated 23.01.2001 as to removal from the services of Mansukh Chhena on the misconduct of unauthorised absence is justified or is shockingly disproportionate to the gravity of misconduct?

(V) To what relief Mansukh Chhena is entitled for in this case?

**FINDINGS**

7. **ISSUE NO. III & IV:-** The workman Mansukh Chhena deposed in his oral evidence (Ext.7) that he was appointed as Box boy on 19.11.1984 and till before 23.01.2001 he worked with the 1st party employer and he completed more than 240 days in every Calendar year. But on 23.01.2001, the 1st party employer has illegally and arbitrarily terminated his service without giving him opportunity of hearing. He was drawing salary in the scale of Rs. 750-940 at the time of termination, but he was not given any notice, no departmental inquiry has properly been conducted and the 1st party employer has imposed extreme punishment of removal which is against the principles of natural justice. He further deposed that his promotion was ignored even being most senior whereas his juniors have been granted promotion and have been posted as T.T.E. he started agitation against the management of the 1st party and after giving due notice he went on hunger strike. He also raised industrial dispute for denying the benefit of promotion before the A.L.C. (C) Adipur cum conciliation officer and the dispute was seized before the conciliation officer cum Regional Labour Commissioner. But during the pendency of conciliation preceding the 1st party employer transferred him from Dhrangadhara to Palej. Since the dispute was pending and he was on leave. The dispute could not be resolved and conciliation officer submitted failure report to the appropriate Government but the appropriate government rejected the dispute for adjudication and when he came to know that the dispute has not been referred for adjudication he resumed duty, and so no question of unauthorised absent. But in order to victimise him 1st party issued show cause notice treating him unauthorisedly absent from duty. His further evidence is that since dispute was pending as conciliation proceeding was going on so no question for attending the duty since industrial dispute would not survive. During the intervening period the 1st party treated him unauthorisedly absent and issued chargesheet without appointing any presenting officer or inquiry officer and conducted the departmental inquiry and thereafter imposed the punishment of removal. That no reasoning has been recorded by the inquiry officer and the charges of unauthorised absent has not been proved. His past service was blotless and this aspect was not considered and imposed extreme punishment of removal which is illegal and unwarranted. His further evidence is that he is unemployed and have no source of income and his elder brother and other relative maintain him and his family members. In cross examination by the lawyer of the 1st party it has come that in the year 1996, he was doing service at Dhrangadhara as box boy, presently, he is living at native house. In the year 1995 he filed application before L.E.O. Adipur raising dispute for not granting promotion to him by railway Dept. and that he has written in application as to his quarrel with station superintendent Dhrangadhara. He futher deposed *vide* para 8 that station suptd. informed him that as per order of D.R.M. he has been removed from the service. He also stated that he had been transferred from Dhrangadhara to Palej. He did not obtain transfer memo and he did not go to join at Palej. He denied that of his own will he abandoned the service and left to go on service duty. He deposed that Rly Dept. removed him from service but copy of order has not been given to him.

8. The workman/Union has submitted as many as 13 documents to support the case. Ext. 10/a is letter dated 02.06.1995 of S.S. DHR which go to show four staff including the workman Mansukh Chhena (Box boy) were instructed to appear in the written test of T.C. at D.R.M. office Vadodara on 03.06.1991 at 10 a.m. but the station suptd.

Dhrangadhara released only three staff giving duty post but Mansukh Chhena was not released, no duty pass was given to him to appear in the T.C. exam on 03.06.1995. Ext. M-10/b is letter dated 23.09.1995 of D.R.M. Office Vadodara addressed to Mansukh Chhena Box boy, Dhrangadhara with reference to hunger strike notice/letter dated 23.09.1995 of Mansukh on the points that his application for P.F. advance had been sanctioned for Rs. 6000 and if he had not received the amount he can contact with cashier, Dhrangadhara. Regarding the next allegation as to not giving of opportunity to appear in the T.C. exam at Vadodara, it has been replied that Station Suptd., Dhrangadhara had also released you from duty with duty pass but due to your own negligence you did not appear in T.C. examination and remained absent. This is contradictory reports of the Office of D.R.M. Vadodara since as per Ext. 10/a Station Superintendent had released only three staff giving them duty passes and had denied to release Mansukh by not issuing duty pass by his letter dated 02.06.1995. The 1st party has not filed any documents to show that S.S. Dhrangadhara had actually issued duty pass to Mansukh along with three other staff Hemu, Ravindra and Jaynandan Shukla. Ext. 10/c is letter dated 29.09.1995 with reference to letter of Mansukh dated 23.09.1995 that his notice to sit on hunger strike from 04.10.1995 is illegal and as per letter dated 28.09.1995 (Ext. 10/c) all the issues has been clarified. But it has been seen that the matter regarding release of Mansukh with duty pass is not corroborated as per letter of S.S. Dhrangadhara dated 02.06.1995 (Ext. 10/a). Ext. 10/d is letter dated 05.10.1995 of Shri B.K. Parmar, President SC/ST association Dhrangadhara branch to Rly administration to stand in support of grievances of Mansukh Chhena against the biased action of S.S. Dhrangadhara, Shri K.K. Dave, Clerk Shri P.M. Upadhyaya and T.I. Shri S.S. Tomar. Ext. M-10/e is memorandum of compromise between Rly administration and employee arrived at on 06.10.1995. Workman Mansukh called off hunger strike at 20.40 hrs on such settlement that impartial inquiry will be made for reason in not sanctioning of his P.F. advance, to ascertain the staff liable in this regard and that impartial inquiry will be conducted in not informing to Mansukh regarding T.C. exam on 03.06.1995 timely and not releasing him timely and the staff at fault will be booked for proper action and the period from 04.10.1995 to 06.10.1995 was treated as special case of leave due etc. Ext. 10/f is letter dated 28.06.1996 as to promotion of employee to which 2nd party workman is claiming that his juniors have been promoted. Ext.10/g is letter of D.R.M (E) Baroda dated 03.07.1997 to ALC (C), Adipur on the subject. Industrial Dispute between the management of G.M. , D.R.M., W.R., Vadodara and P.R.K.P. which go to show that workman Mansukh Chhena have been transferred from Dhrangadhara to Palej on complaint of Shri Dilip Singh Bhura member of Parliament, Lok Sabha along with complaint of All India Guards Council due to mishandling and abusing and assaulting to Shri Rajesh Agrawal, Guard. Ext. 10/H is transfer memo dated 09.04.1997 of S.S. Dhrangadhara as to no further order of retention or cancelation of transfer of transferee Mansukh and representation of Mansukh to S.S Dhrangadhara raising question of his transfer during pendency of conciliation proceeding before conciliation officer. Ext. 10/1 is application/representation of the Union (P.R.K.P) on its letter head to ALC (C) Adipur (Kutch) on the issue of industrial dispute with reference to letter dated 03.07.1997 and 27.07.1997 of D.R.M. (E) Vadodara. Ext. 10/j is dated 18.04.1998 of Station Superintendent Dhrangadhara regarding statement of Cadre and actually staff working at Dhrangadhara Rly. Station in which the name of workman Mansukh Chhena is at SI. No. 34 with remarks showing transferred to Palej but till date absent from 09.12.1996 to till date (18.04.1998). Ext. 10/K is letter dated 21.04.1998 of Divisional Office, Vadodara to A.L.C. (Central), Adipur (Kutch) intimating that there exist no vacancy under SS/ DHG at present and so Mansukh has to carry out his transfer to Palej. This clearly go to show that when the Industrial dispute had been seized before conciliation officer regarding promotion matter, workman Mansukh was transferred from Dhrangadhara to Palej on complaint of guard and also on recommendation of member of Parliament whereas Railway rules says that on recommendation of M.P. no railway employee can be transferred. Ext. 10/N is copy of criminal case chargesheet against workman Mansukh, on the basis of police complaint of guard. Dhrangadhara and acquittal order passed by Addl. Chief Judicial Magistrate, Dhrangadhara. That go to show that in the alleged complaint of guard. Mansukh was acquitted of charges u/s 332, 323, 504, 405, 114 IPC.

9. It has been argued on behalf of the 2nd party on the basis of Ext. 10/J that when S.S. Dhrangadhara had relieved workman Mansukh from 09.12.1997, then how standard From V dated 17.04.1999 Ext. 10/L was issued showing absenteeism of Mansukh from duty place Dhrangadhara from 09.12.1996 to 14.03.1999 totalling 830 days absent from duty. The contention of 2nd party is not tenable that S.F.V. should be issued as to his absenteeism from Palej rather than from Dhranghadhara. But it has to be borne in mind that transfer memo dated 09.04.1997 (Ext. 10/H) was issued to Mansukh directing to join at Palej, but in fact Mansukh did not carry out his transfer and remained agitated the matter through Union P.R.K.P. and so Mansukh cannot be treated as relieved from Dhrangadhara.

10. Now coming to propriety of domestic enquiry as per SFV (Ext. 10/L). This is memorandum of charge sheet issued to Mansukh, box boy, Dhrangadhara attached with articles of charge (schedule I and to unauthorised absence from duty place and schedule II detail of allegation from 09.12.1996 to 31.12.1996 - 23 days

From 01.01.1997 to 31.12.1997 - 365 days.

From 01.01.1998 to 31.12.1998 - 365 days

From 01.01.1999 to 14.03.1999 - 73 days total 830 days of unauthorised absence from duty.

11. It is case of the 2nd party (Union) that principle of natural justice was not followed in conducting enquiry against workman Mansukh. The Union/workman as per his oral evidence Ext. 7 has challenged the validity of the domestic enquiry held against him that without issuing notice to him, directly S.F.V. was issued without intimating names of presenting officer and inquiry officer and also names of witnesses and documents and also not giving opportunity to defend himself. The witness of the 1st party namely, Smt. Indira N. Patel, Chief Office Suptd., Vadodara, D.R.M. office has deposed vide Ext. 17 at para 3 that on 30.12.2000 Mansukh was given chargesheet by Divisional Operating Manager, Ahmedabad. Her such evidence in against the actual state of affairs. As per copy of S.F.V. (Ext.10/L) submitted by 2nd party which was issued on 17.04.1999 by Vadodara Rly. Management and not by Ahmedabad. She also stated that all relevant paper of departmental enquiry shall be filed but no enquiry papers has been filed on behalf of the 1st party. Only copy of details of charges of absenteeism was issued by Divisional Operating Manager, Ahmedabad. But documents of appointment of presenting officer, inquiry officer and enquiry proceedings and statement of management witnesses, supporting the chargesheet have not been filed to meet the challenge of the 2nd party that valid departmental inquiry was conducted. The 1st party witness at para - 13 during cross examination admitted that no Railway employee can approach political leader or high Railway officer for writing recommendation letter. The witness gave evasive reply to question that Mansukh was falsely implicated in criminal case by S.S. DHR and Rail guard who got recommendation letter written by M.P. Shri Dilip Singh Bhuria for transfer of Mansukh in this way that she has no idea in this regard. This witness has not supported vide para 15 that charge sheet was served on Mansukh and Mansukh was called in inquiry sitting, Mansukh was supplied copy of inquiry report and also not supported that on proper notice he was removed from service. The witness admitted the document Ext. 10 series filed by the 2nd party but failed to support proper and valid departmental inquiry held against Mansukh. No documents has been filed though it was asserted that the relevant documents shall be filed. Vide para-17 the management witness has admitted that no previous record regarding service of Mansukh has been filed. The witness admitted that Mansukh had not earlier been served with charge sheet of unauthorised absent. The witness has shown ignorance that during proceedings the parents, wife and daughter of Mansukh died one after another. The management witness without submitted relevant inquiry papers has deposed vide para 9 that punishment order or removal from services of Mansukh is justified.

12. On consideration of the evidence discussed in the foregoing paras, I am of the considered view that no valid and proper departmental enquiry was conducted against delinquent workman Mansukh by the 1st party, and the principles of natural justice was not followed. Thus issue No. III is decided against the 1st party.

13. From the oral and documentary evidence adduced on behalf of the 2nd party I find the delinquent workman had suffered a lot at the hands of Station Manager, Dhranghadhara in not allowing him to appear in T.C. exam at Vadodara on 03.06.1995, not intimating him, though he was also among one of candidate with three others to appear in the examination. More so, by not providing Mansukh the money of P.F. advance for meeting treatment of his ailing parents, wife as facing acute financial scarcity, and also not giving him promotion etc. and more so, sitting on hunger strike and callng off hunger strike on settlement with administration of Vadodara and not taking proper action against the liable railway employee in preventing him from appearing in T.C. exam and not intimating and disbursing to sanction amount of money of P.F. to him when he was in dire necessity appear to have caused much mental agony to Mansukh and that also adding fire as to his transfer to Palej when conciliation matter was seized before A.L.C. (C) and R.L.C. (C) and in that course death of his parents, wife and daughter due to financial crisis and not enabling him to provide proper treatment to them causing tremendous mental agony to him for his absenteeism. But such absenteeism does not appear to be intentional in view of the above circumstances. But the Disciplinary Atuhority of the 1st party failed to consider these aspects and imposed punishment of removal from service with effect from 23.01.2001 which shocks the judicial conscience of this Tribunal that a permanent and regular staff workman Mansukh have been inhumanly treated to eliminate him by way of economic death by the weapon of extreme punishment of removal from service on alleged unauthorised absent which has not been proved to be intentional. So in such view of the matter this tribunal by invoking the powers under Section 11A of the Industrial Disputes Act, 1947 holds that the order of punishment dated 23.01.2011 as to removal from the service, on the misconduct of unauthorised absent is not at all justified since the same is shockingly disproportionate to the gravity of misconduct. So the order of punishment dated 23.01.2001 is hereby set aside.

14. Thus ISSUE NO. (IV) is also decided against the 1st party.

15. ISSUE NO. I & II:- In view of findings to issue No. III and IV in the foregoings, I further find and hold that the reference is maintainable and the 2nd party has valid cause of action in this case.

16. ISSUE NO. V:- The concerned workman Shri Mansukh Chhena is entitled for his reinstatement in service

with continuity of service and consequential benefits with 60% back wages.

Thus the reference is allowed. No order of cost.

The 1st parties are directed to implement the award within 60 days of receipt of the copy of award failing which the back wages will carry interest @ 9% P.A.

Let two copies of award be sent to the appropriate Government for publication u/s 17 of the I.D. Act.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 14 फरवरी, 2014

**का॰आ॰ 788.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 85/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/65/2013-आईआर(बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th February, 2014

**S.O. 788.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 85/2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Southern Railway and their workmen, received by the Central Government on 14/02/2014.

[No. L-41011/65/2013-IR(B-I)]
SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Monday, the 3rd February, 2014

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

**INDUSTRIAL DISPUTE No. 85/2013**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1974 (14 of 1947), between the Management of Southern Railway, Madurai and their workman)

Between:

The Division Secretary, : 1st Party/Petitioner
All India Loco Running Staff Association
Old No. E/210, New No. 98 Santhanam Road
TVS Nagar
Madurai-3

AND

1. The Divisional Railway Manager
2nd party/1st Respondent
Southern Railway
Madurai Division
Madurai-10

2. The Senior Division Machanical Engineer
Southern Railway 2nd Party/2nd Respondent
Madurai Division
Madurai-10

1. The Senior Division Personnel Officer
Southern Railway 2nd Party/3rd Respondent
Madurai Division
Madurai-10

2. The Chief Operation Manager
Southern Railway 2nd Party/4th Respondent
Egmore
Chennai-3

**Appearance:**

For the 1st Party/Petitioner : M/s C. Arun Kumar, Advocate

For the 2nd Party/1st, 2nd, 3rd & 4th Respondent : M/s K. Muthamil Raja, Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-41011/65/2013-IR(B-1) dated 19.09.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the Management of Sourthern Railway, Madurai is justified in punishing S/Sri M. Narayanan, R.M. Gandhi and C. Ramesh Kumar, Ramasamy and Poovarajan causing heavy monetary loss and affecting their future promotions? To what relief are the workmen entitled?*"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 85/2013 and issued notice to both sides. Both sides have entered appearance through their counsels.

3. After appearance of the petitioner, the case was being repeatedly posted for filing Claim Statement. Howeever, the petitioner as well as the counsel were continously absent. The petitioner has not cared to file the Claim Statement. The petitioner seems to be not interested in prosecuting the case. In the absence of any material on the sides of the petitioner the case is only to be closed.

In the result the ID is closed. The reference is answered against the petitioner.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd February, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined**

For the 1st Party/Petitioner : None

For the 2nd Party/1st & 2nd Management : None

**Documents Marked:**

On the petitioner's side

| Ex.No. | Date | Description |
|---|---|---|
| | | N/A |

**On the Management's side**

| Ex. No. | Date | Description |
|---|---|---|
| | | N/A |

नई दिल्ली, 14 फरवरी, 2014

**का॰आ॰ 789.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे प्रबंधतंत्र के संबद्ध के नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 13/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/02/2014 को प्राप्त हुआ था।

[सं॰ एल-41011/97/2009-आईआर(बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th February, 2014

**S.O. 789.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 13/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Southern Railway and their workmen, received by the Central Government on 14/02/2014.

[No. L-41011/97/2009-IR(B-I)]
SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI**

Friday, the 31st January, 2014

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

**Industrial Dispute No. 13/2011**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workman)

BETWEEN

The Divisional Secretary : 1st Party/Petitioner
All India Station Masters Association
15, Patel Street, Nehru Nagar,
Chromepet
Chennai-600045

AND

The General Manager : 2nd Party/Respondent
Southern Railway
Park Town, NGO Annexe
Chennai-600003

**APPEARANCE:**

For the 1st Party/Petitioner : M/s. N. Shanmugasundaram, Augustus Babu Authorized Representatives

For the 2nd Party/Management : M/s. P. Srinivasan, Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-41011/97/2009-IR(B-I) dated 18-02-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

*"Whether the demand of the All India Station Masters Association, Chennai Division to treat the inpatient/outpatient treatment period, for any ailment in the course of periodical medical examination procedure, as period spent on duty is legal and justified? To what relief the Association is entitled?"*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 13/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are these:

The First Party is a registered Trade Union. The employees of the Second Party including the station Masters had to undergo periodical medical examination. Station Masters are classified as A2 for the purpose of medical examination because of vision test required in the interest of public safety. They are to appear for medical examination at the termination of every four years calculated from the date of appointment until they attain the age of 45 years, then every two years until the age of 55 years and

thereafter annually until superannuation from service. Apart from periodical medical examination at the time specified above, they are also to undergo medical examination if they have undergone treatment of operation of eye unless they have been treated by a Railway Medical Officer and also in case they are absent from duty for a period in excess of 90 days. The employing department is responsible for the punctual appearance of the railway employee before the appropriate medical examiner for the purpose of periodical and other medical examination. The concerned medical examiner is authorized to issue either the fit certificate or the unfit certificate as the case may be. There is no fule in the Indian Railway Medical Manual authorizing the Medical Officer to issue sick certificate when a railway employee produces proper form for periodical medical examination. The railway employees in service are examined periodically to ensure that they continue to be fit for their job and also to detect any deterioration in health with a view to correcting them. To arrive at the conclusion whether an employee is fit or unfit the Medical Officer gives treatment to be employees either as inpatient or as outpatient, depending upon the severity of the illness which is detected during the course of periodical medical examination. The interval from the time the employee appears for periodical medical examination and the medical officer arrives at the conclusion regarding the fitness or unfitness of the employee is to be treated as duty. This provision in the Railway Medical Manual is not adhered to by the Medical Officers of Chennai Division of the Southern Railway. The Claim Petition is preferred because of continuous refusal to adhere to the provision in the medical manual regarding duty as stated above. This is against the note to Paragraph-524 of the Railway Medical Manual. The Second Party is liable to treat the period taken by the Medical Officer to decide the fitness or the unfitness of the employees on periodical medical examination as duty. An order may be passed accordingly.

4. The Second Party has filed Counter Statement contending as follows:

The claim is not maintainable either in law or on facts. The petitioner is only an association and not a recognized union. They have no reight to repesent the whole Station Masters. The periodical re-examination of serving railway employees is provided under Paragraph-514 of Indian Railway Medical Manual. When the railway employee is sent for medical examination, his interest is alos involved. The periodical medical examination is similar to that of a health check-up which is available to a particular class of employees whereas it is not extended to certain other class of employees. Periodical Medical Examination is done to ensure the safety of the public as well as for the safety of employees themselves. It cannot be treated as only for the inteest of the administration. Paragraph-524 of the Railway Medical Manual states how the period of absence of railway employees sent for periodical medical examination is to be treated. The examination is to be completed within three days and only when the railway doctor is not able to come to a conclusion within a period of three days, the entire period required by the doctor to come to a conclusion is to be treated as duty. A railway employee is granted 20 days of sick leave and 30 days leave on average pay every year and this is accumulated every year. When a r ailway employee is treated in hospital for sickness, even though this is when he is sent for speriodical medical examination, the period beyond three days cannot be treated as duty. The mecial examination is certainly in the interest of the employee. By this facility he is restored to normal health condition. When an employee is granted 30 days of Earned Leave and 20 days of Half Earned Leave every year with facility of accumulating the same during his entire service, treating the period beyond three days for periodical medical examination as duty is unjust and unreasonable. The prayer in the Claim Statement is very vague and frivolous. The First Party is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 to WW5 and MW1 and documents marke as Exts. W1 to Ext. W31 on the side of the First Party.

6. The points for consideration are:

(i) Whether the claim of the First Party to treat the inpatient/outpatient treatment period in the course of periodical medical examination as duty is legal and justified?

(ii) What is the relief, if any to which the First Party is entitled?

**The Points**

7. The Industrial Dispute is raised by the Divisional secretary of All India Station Masters Association, Chennai Division on behalf of the Station Masters of Chennai Division. Certain classes of employees of the Second Party including the Station Masters are subjected to periodical medical examination while they are in service. For the purpose of such examination they are classified into different categories. The Station Masters are placed under the category A2. Apart from undergoing medical examination before entering in service the Station Masters and such other classes of employees of the Second Party are to undergo periodical medical examination as stated above. Such medical examination will be done once in every foru years until the age of 45 years, once in every two years after that, until the age of 55 years and then annually until supernnuation. The Association seems to have raised the dispute regarding the manner in which period taken for treatment during periodical medical examination is to be treated, alongwith other claims. The Government has referred the dispute regarding the period of treatment during periodical medical examination alone. This Tribunal is asked to adjudicate on the demand of the First Party to treat the

inpatient outpatient treatment period for any ailment in the course of periodical medical examination as duty.

8. The Second Party has raised a Preliminary objection in the counter statement that the association is not competent to raise the dispute. The contention raised is that is in only an association and not a registered union. This contention is seen referred in the written argument filed on behalf of the First Party also. However, there is no legal basis for this contention of the Second Party. It is sufficient that the dispute is raised on behalf of a sufficient number of employees, representing the employees. It need not be by the Registered Union. So this preliminary objection by the Second Party is only to be rejected.

9. The First Party who is the Secretary of the Association has given evidence a WW1. He has stated in his Affidavit that if sickness in the course of medical examination is being attended to ascertain to continue in the post the period spent on such treatment constitute period of medical examination.

10. WW2 is an Assistant Station Master under the Southern Railway. On his attaining the age of 45 years he was directed to appear for periodical medical examination for every 2 years. On his appearing before the Medical Officer for periodical medical examination on 05.04.2011 as directed he was diagnosed with cataract on both eyes and had to undergo surgery. He was operated on his right eye on 29.04.2011 and left eye on 28.06.2011. He was declared fit for duty on 23.08.2011. For the period from 05.04.2011 to 23.08.2011 he was treated as sick. Though he had given a representation to treat the period as duty, his representation was not disposed. He had produced the movement card showing that he was sent for periodical medical examination on 05.04.2011 and he was issued medical certificate of fitness on 23.08.2011. These are marked as Ext. W10 and Ext. W11 respectively.

11. WW3 another employee of the Second Party, also working as Station Master was directed to appear before the Medical Officer for periodical medical examination on 23.06.2008. He was diagnosed with hypertension. He was directed to the Railway Hospital, Perambur. At Perambur medicines were prescribed and he was directed back to Railway Medical Officer. According to this witness, he was forcefully kept under sick list during the period though he had refused to sign the sick certificate. He had submitted a representation which was turned down. According to this witness, the very purpose of periodical medical examination is to ascertain whether the employee is fit for the post he is holding and also to treat him for any disease detected during periodical medical examination According to him, though there is no rule stating that he should be kept under the sick list in case of illness during the periodical medical examination, he was kept in this manner.

12. WW4 is the Chief Health Director of the Southern Railway and WW5 is the Chief Medical Superintendent of the Southern Railway WW4 has stated that if an employee is found ill during periodical medical examination, the Medical Officer is to treat the employee. She stated that the Railway Medical Manual does not specify the period during which the treatment is to be made. She stated that it is in the interest of the employee and in the interest of public that the employee is treated. She stated that if the examinees are found having illness like diabetes, hypertension, etc. they have to be put under sick list and such period of sickness cannot be treated to be as duty. She has added that the manual does not specify whether to place the employee or not in the sick list and that it is the discretion of the doctor. WW5 has been examined to prove Ext. W12 issue by her predecessor. The patient referred in Ext.W12 was detected with hypertension on periodical examination and was put under sick list from 26.03.2008 to 11.04.2008.

13. MW1 who is the Asstt. Peronnel Officer of Southern Railway has given evidence in support of the Second Party. According to him only three days can be treated as duty during periodical medical examination as this is enough to conclude the examination. Only in cases where examination could not be completed due to administrative reasons, the time spent beyond three days can be treated as duty. Where the employee is found to have some disease which needs treatment he is to be admitted in the Railway Hospital and the period spent for treatment is to be counted as leave. If sick leave is granted on this ground, the period cannot be treated as duty.

14. The intention is examining WW2 and WW3 seems to have been to bring out the fact that though these two had been treated for some aliment during periodical medical examination, the period of such treatment has not been considered as duty but as sick leave only. WW4 and WW5 are probably brought in to have enlightenment in the manner in which the periodical medical examination and threatment of the ailment during the time was being done.

15. The Indian Railway Medical Manual is the *magna carta* regarding medical examination of the candidated for employment as well as the persons who are already in the employment of the Second Party. Ext. W1 is the extract of the relevant portions from the Railway Medical Manual. It separately specifies how a candidate is to undergo examination and how periodical medical examination of the concerned employees should be done. Paragraph-514 of the manual states that the employees in Class A1, A2, A3, B1 and B2 required to appear for periodical re-examination during specified intervals. Employees coming under category A1, A2 and A3 (the Station Masters come under category A2), are to undergo examination at the termination of period of 4 years calculated from the date of appointment untill they attain the age of 45 years and then every 2 years untill the age of 55 years and thereafter annually until the conclusion of the service. Proviso-F to Paragraph-514 states that employees coming under categories A1, A2 and A3

should be sent for special medical examination in the interest of safety if they had undergone treatment or operation for eye from a medical practitioner other than Railway Medical Officer and also in case one was absent from duty for a period in excess of 90 days. paragraph 515(3) states that the onus of sending the candidate or a railway employee for medical examination is that of the employee department. The department will be responsible for the punctual appearance of the railway employee particularly the operating staff concerned with train passing duties, before the authorized medical examiner. The relieving of the employee for the purpose of examination need not be exactly the date when the re-examination falls due but it will be the month in which this fall due.

16. The bone of contention between the parties if Paragraph-524 of the Manual which specifies the manner in which the period of absence of railways employees sent for periodical medical re-examination is to be treated. This states that the time spent in journey to and from the actual medical examination is to be treated as duty. It is further stated that the time taken by the examining medical authority to come to a decision in the matter is to be treated as duty. In case the examining authority is not quite sure of the decision to be taken he has to refer the employee to the Chief Medical Director and he is to give a decision. In such cases also the period upto the announcement of the decision is to be treated as duty.

17. The entire dispute between the parties is regarding the interpretation of the note give to paragraph-524. This states that periodical examination of an employee should invariably be completed in three days. If further states that if a railway doctor is not able to come to a conclusion within a period of three days, the entire period required for the doctor to come to a conclusion regarding the examination should be treated as duty. There is a rider that the time taken by the employee to procure spectacles or any willful delay by the employee should not be treated as period on duty.

18. On periodical medical examination an authorized medical office is bound to issue certificate stating either that the person is fit for the job or that he is unfit in the prescribed forms of certificates. There is provision for appeal against the finding of medical examiner to rule out the possibility of error of judgment in the decision.

19. Thus, ongoing through Paragraph-521 of the Manual it could be seen that there are two options for the medical office, either to give a certificate of fitness or a certificate stating that the employee is unfit for the job. Once a person is declared unfit for the job he cold not continue in the job. There is no provision for issuing a certificate stating the an employee is temporarily unfit to continue in the job. He should be wither fit or will be unfit. There seems to be no via medic also far as persons in service are concerned. It is not that the Second party is unaware of a condition in which a person will be temporarily unfit for the job. Paragraph-525 states about temporary unfitness of individuals appointed straightway. However, it is not applicable to the persons who are in continuous service.

20. On interpretation of the note to Paragraph-524 it could be seen that nowhere it is stated that if a person is found suffering from any ailment during periodical medical examination and is found temporarily unfit to handle his job, he is to be sent for treatment and is to be made fit for this job. At the same time, it is not also stated that a person who is found temporarily unfit because of his particular ailment which may be handicap for him for doing his job for a particular time should be issued a certificate of unfitness and sent away by the medical examiner. So what is the option available in such cases? The answer to the dispute is dependent on this. It is contended by the first Party that if they are to undergo treatment during the period of medical examination before they are issued with a sickness certificate, this period is to be treated as if they are on duty, which according to them is the interpretation to be given to note to Paragraph-524of the Manual. On the other hand, the contention raised by the Second Party is that only in case there is administrative delay on the part of the medical officer in examining the person and issuing the certificate, the period is to be treated as duty. Incase of ailment and consequent treatment the period is to be treated as period of sickness and the employee is entitled to take leave that is eligible. In support of this contention, it is pointed out that an employee is having 20days sick leave annually and 30 days leave of other kinds also which he is at liberty to avail during such contingencies.

21. In fact on a perusal of the note to Paragraph-524, it could be seen that it lacks clarification regarding the manner in which a person having ailment during period of medical examination is to be treated. It is for the Railways to make necessary amendment to the note and clarify the matter. Probably it would be better if it is specified that the person under going examination is to be treated to be temporarily unfit for duty until he recovers and this period of treatment is to be treated as sick leave or other leave just like incase of treatment of illness during a period other than the period other than the period of medical examination. But so far as there is no such provision in the Manual, the note to Paragraph-524 is to be interpreted in a manner beneficial to the employee. As pointed out on behalf of the First Party it is in the interest of the employer and also in the interest of the public, the Second Party being establishment dealing with transport of man and goods, that the employee is kept fit for duty. Probably it was keeping this in mind that the note to Paragraph-524 was incorporated. What is stated in the note is that if the Railway doctor is not able to come to a conclusion within a period of three days, the entire period required for the doctor to

come to a conclusion regarding the examination should be treated as duty. Nowhere it is stated that only in case of administrative delay on the part of the Medical Officer, the period beyond three days should be treated as duty. On the other hand, if a literal interpretation is given to this sentence, the only interpretation that could be given is that the period in between the date on which the employee had approached the medical officer for periodical examination and the date on which fitness certificate is issued has to be treated as duty. Accordingly, the first Party is entitled to relief to this extent.

22. It is directed that the period starting from the date on which the employee has approached the medical officer for Periodical Medical Examination to the date of issuance of the certificate shall be treated as duty.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him. Corrected and pronounced by me in the open court on this day the 31st January, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

| | | |
|---|---|---|
| For the 1st Party/ Petitioner Association | : | WW1, Sri R. Sethumadhavan<br>WW2, Sri U. Shajahan<br>WW3, Sri DSM Agastas Babu<br>WW4, Dr. S. Lalitha<br>WW5, Dr. Sulochana A. Rajani |
| For the 2nd Party/ Management | : | MW1, Sri T.R. Mukunthan |

**Documents Marked:**

**On the petitioner's side**

| Ex. No. | Date | Description |
|---|---|---|
| Ex.W1 | | Extract of Indian Railway Medical Manual |
| Ex.W2 | 15.04.2009 | Information furnished by Chief Health Director/PIO (Medical)/ Southern Railway |
| Ex.W3 | 23.04.2010 | Information furnished by Chief Medical Superintendent/ Chennai Division/Southern Railway/Chennai Egmore |
| Ex.W4 | 29.06.2010 | Information furnished by Chief Medical Superintendent/ Chennai Division/Southern Railway/Chennai Egmore |
| Ex.W5 | 18.07.2008 | CPO/MAS Ir.No. PR/75/P/ Vol.VII dated 05.02.2002 (PBC No. 13/2002 |
| Ex.W6 | 30.11.2011 | Copy of OA No. 1038/2009 of Central Administrative Tribunal Madras Bench/Chennai |
| Ex.W7 | - | Copy of the extract containing Para-105 and Para-113 of IREM |
| Ex.W8 | 26.07.2011 | Copy of letter issued by the Chief Medical Director to Chief Medical superintedent/RH/ TVC |
| Ex.W9 | 05.04.2011 | Copy of the movement card for employees sent for Periodical Medical Examination (PME) |
| Ex.W10 | - | Annexure to Ex. W9 |
| Ex.W11 | 23.08.2011 | Copy of the Fitness Certificate issued by Sr. Divisional Medical Officer, Tambaram |
| Ex.W12 | 26.03.2008 | Copy of the movement card for PME |
| Ex.W13 | - | Copy of the doctos's prescription issued to WW3 |
| Ex.W14 | 11.04.2008 | Copy of the Sick and Fitness Certificate |
| Ex.W15 | 12.04.2008 | Copy of the representation by WW3 to Sr. CMO/MS |
| Ex.W16 | 02.04.2009 | Copy of the form of application for obtaining information under RTI Act. |
| Ex.W17 | 02.07.2009 | Copy of the reply sent by the Chief Medical Superintendent to the representation |
| Ex.W18 | 26.03.2010 | Copy of the decision of the Central Information Commission |
| Ex.W19 | - | Movement card for employee sent for PME |
| Ex.W20 | 08-05-2009 | Information furnished by PIO/ CMS/GOC |
| Ex.W21 | 26.06.2012 | WP 19111 of 2001 of Hon'ble HighCourt/Madras |
| Ex.W22 | 12.03.2009 | OA No. 295/2008 of Hon'ble CAT/Ernakulam Bench |
| Ex.W23 | 15.01.2008 | OA No. 224/2007 of Hon'ble CAT/Ernakulam Bench |
| Ex.W24 | 26.06.2009 | CP(C) No. 46/2009 in OA No. 295/2008 of Hon'ble CAT/ Ernakulam Bench |
| Ex.W25 | 09.07.2012 | Information furnished by PIO/ Dy. CMD/S.Rly |
| Ex.W26 | 24.07.2012 | Corrigendum issued by PIO/ Dy.CMD/S/Rly |
| Ex.W27 | 27.06.2012 | RTI Application |
| Ex.W28 | 23.07.2012 | Information furnished by PIO/ CMS/MS alongwith application and supporting document |

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|---|---|---|
| Ex.W29 | 25.06.2012 | Application u/s RTI |
| Ex.W30 | 27.03.2012 | Letter issued by CMS/MS to CMD/MAS |
| Ex.W31 | 04.04.2012 | Letter issued by CMS/MS to DSM Agastas Babu |

**On the Management's side**

| Ex. No. | Date | Description |
|---|---|---|

Nil

नई दिल्ली, 17 फरवरी, 2014

**का॰आ॰ 790.**—जबकि मैसर्स अरविंद लिमिटेड. [कोड संख्या जीजे/271 के अंतर्गत अहमदाबाद क्षेत्र में] (एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं हैं और कमचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना , 1952 (एतदुपरांत योजना के रूप में संदर्भित) के अंतर्गत सह्श स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अध्यधीन, उक्त प्रतिष्ठान को 1.4.2012 से अगली अधिसूचना तक उक्त योजना के सभी उपबधों के प्रभाव से छूट प्रदान करती है।

[सं॰ एस-35015/8/2013-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 17th February, 2014

**S.O. 790.**—Whereas M/s. Arvind Limited [under code no. GJ/271 in Ahmedabad region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the employees' Provident Funds and Miscellaneous Provisons Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment, with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme. 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in this regard form time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 1-4-2012 until further notification.

[No. S-35015/8/2013-SS-II]

SUBHASH KUMAR, Under Secy.

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